

SECURITIES AND EXCHANGE COMMISSION

FORM 10-Q

Quarterly report pursuant to sections 13 or 15(d)

Filing Date: 2023-12-07 | Period of Report: 2023-10-28
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Petco Health & Wellness Company, Inc.

CIK: **1826470** | IRS No.: **811005932** | State of Incorp.: **DE** | Fiscal Year End: **0128**
Type: **10-Q** | Act: **34** | File No.: **001-39878** | Film No.: **231472545**
SIC: **5990** Retail stores, nec

Mailing Address
10850 VIA FRONTERA
SAN DIEGO CA 92127

Business Address
10850 VIA FRONTERA
SAN DIEGO CA 92127
1-858-453-7845

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

FORM 10-Q

(Mark One)

QUAR
REPO
PURSU
TO
SECTI
13
OR
15(d)
OF
THE
SECUR
EXCH
ACT
OF
1934

For the quarterly period ended October 28, 2023
OR

TRAN
REPO
PURSU
TO
SECTI
13
OR
15(d)
OF
THE
SECUR
EXCH
ACT
OF
1934

For the transition period from _____ to _____
Commission File Number: 001-39878

Petco Health and Wellness Company, Inc.
(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

81-10059
(I.R.S.
Employer

Identificat
No.)

10850 Via Frontera
San Diego, California

(Address of principal executive offices)

92127
(Zip
Code)

Registrant's telephone number, including area code: (858) 453-7845

Securities registered pursuant to Section 12(b) of the Act:

Title
of
each
class
Class
A
Common
Stock,
par
value
\$0.001
per
share

Name
of
each
exchange
on
which
registered

The
Nasdaq
Stock
Market
WQOF

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large
accelerated
filer
Non-accelerated
filer
Emerging
growth
company

Accelerated
filer
 Smaller
reporting
company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

The number of shares of the registrant's Class A Common Stock outstanding as of December 5, 2023 was 230,697,818.

The number of shares of the registrant's Class B-1 Common Stock outstanding as of December 5, 2023 was 37,790,781.

The number of shares of the registrant's Class B-2 Common Stock outstanding as of December 5, 2023 was 37,790,781.

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Forward-Looking Statements

This Quarterly Report on Form 10-Q (this “Form 10-Q”) contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995 as contained in Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, concerning expectations, beliefs, plans, objectives, goals, strategies, future events or performance, and underlying assumptions and other statements that are not statements of historical fact, including, but not limited to, statements regarding: our expectations with respect to our revenue, expenses, profitability, and other operating results; our growth plans; our ability to compete effectively in the markets in which we participate; the execution on our transformation initiatives; and the impact of certain macroeconomic factors, including inflationary and interest rate pressures, consumer spending patterns, global supply chain constraints, and global economic and geopolitical developments, on our business. Forward-looking and other statements in this Form 10-Q may also address our progress, plans, and goals with respect to sustainability initiatives, and the inclusion of such statements is not an indication that these contents are necessarily material to investors or required to be disclosed in our filings with the U.S. Securities and Exchange Commission (the “SEC”). Such plans and goals may change, and statements regarding such plans and goals are not guarantees or promises that they will be met. In addition, historical, current, and forward-looking sustainability-related statements may be based on standards for measuring progress that are still developing, internal controls and processes that continue to evolve, and assumptions that are subject to change in the future.

Such forward-looking statements can generally be identified by the use of forward-looking terms such as “believes,” “expects,” “may,” “intends,” “will,” “shall,” “should,” “anticipates,” “opportunity,” “illustrative”, or the negative thereof or other variations thereon or comparable terminology. Although we believe that the expectations and assumptions reflected in these statements are reasonable, there can be no assurance that these expectations will prove to be correct or that any forward-looking results will occur or be realized. Nothing contained in this Form 10-Q is, or should be relied upon as, a promise or representation or warranty as to any future matter, including any matter in respect of our operations or business or financial condition. All forward-looking statements are based on current expectations and assumptions about future events that may or may not be correct or necessarily take place and that are by their nature subject to significant uncertainties and contingencies, many of which are outside of our control.

Forward-looking statements are subject to many risks, uncertainties and other factors that could cause actual results or events to differ materially from the potential results or events discussed in such forward-looking statements, including, without limitation, those identified in this Form 10-Q as well as the following: (i) increased competition (including from multi-channel retailers and e-Commerce providers); (ii) reduced consumer demand for our products and/or services; (iii) our reliance on key vendors; (iv) our ability to attract and retain qualified employees; (v) risks arising from statutory, regulatory, and/or legal developments; (vi) macroeconomic pressures in the markets in which we operate, including inflation and prevailing interest rates; (vii) failure to effectively manage our costs; (viii) our reliance on our information technology systems; (ix) our ability to prevent or effectively respond to a data privacy or security breach; (x) our ability to effectively manage or integrate strategic ventures, alliances, or acquisitions and realize the anticipated benefits of such transactions; (xi) economic or regulatory developments that might affect our ability to provide attractive promotional financing; (xii) business interruptions and other supply chain issues; (xiii) catastrophic events, political tensions, conflicts and wars (such as the ongoing conflict in Ukraine), health crises, and pandemics; (xiv) our ability to maintain positive brand perception and recognition; (xv) product safety and quality concerns; (xvi) changes to labor or employment laws or regulations; (xvii) our ability to effectively manage our real estate portfolio; (xviii) constraints in the capital markets or our vendor credit terms; (xix) changes in our credit ratings; (xx) impairments of the carrying value of our goodwill and other intangible assets; (xxi) our ability to successfully implement our operational adjustments, achieve the expected benefits of our cost action plans and drive improved profitability; and (xxii) the other risks, uncertainties and other factors referred to under “Risk Factors” and identified elsewhere in this Form 10-Q and our other filings with the SEC. The occurrence of any such factors could significantly alter the results set forth in these statements.

We caution that the foregoing list of risks, uncertainties and other factors is not complete, and forward-looking statements speak only as of the date they are made. We undertake no duty to update publicly any such forward-looking statement, whether as a result of new information, future events or otherwise, except as may be required by applicable law, regulation or other competent legal authority.

In addition, statements such as “we believe” and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based on information available to us as of the date of this Form 10-Q. While we believe that information provides a reasonable basis for these statements, that information may be limited or incomplete. Our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or

review of, all relevant information. These statements are inherently uncertain, and investors are cautioned not to unduly rely on these statements.

PART I—FINANCIAL INFORMATION

Item 1. Financial Statements.

PETCO HEALTH AND WELLNESS COMPANY, INC.

CONSOLIDATED BALANCE SHEETS

(In thousands, except per share amounts)

	October 28, 2023		January 28, 2023
	(Unaudited)		
ASSETS			
	Current assets:		
Cash and cash equivalents	\$ 139,782	\$	201,901
Receivables, less allowance for credit losses (\$1,897 and \$952, respectively)	50,180		49,580
Merchandise inventories, net	730,148		652,430
Prepaid expenses	46,856		51,274
Other current assets	40,562		60,809
Total current assets	<u>1,007,528</u>		<u>1,015,994</u>
Fixed assets	2,142,520		1,987,560
Less accumulated depreciation	<u>(1,314,721)</u>		<u>(1,184,233)</u>
Fixed assets, net	827,799		803,327
Operating lease right-of-use assets	1,390,671		1,397,761
Goodwill	976,247		2,193,941
Trade name	1,025,000		1,025,000
Other long-term assets	199,316		176,806
Total assets	<u>\$ 5,426,561</u>	<u>\$</u>	<u>6,612,829</u>
LIABILITIES AND EQUITY			
	Current liabilities:		
Accounts payable and book overdrafts	\$ 486,634	\$	381,213
Accrued salaries and employee benefits	100,997		89,929
Accrued expenses and other liabilities	215,875		217,556
Current portion of operating lease liabilities	305,975		309,766
Current portion of long-term debt and other lease liabilities	5,082		22,794
Total current liabilities	<u>1,114,563</u>		<u>1,021,258</u>
Senior secured credit facilities, net, excluding current portion	1,574,909		1,628,331
Operating lease liabilities, excluding current portion	1,148,958		1,148,155
Deferred taxes, net	270,841		303,121
Other long-term liabilities	124,436		130,487
Total liabilities	<u>4,233,707</u>		<u>4,231,352</u>
	Commitments and contingencies (Notes 4 and 8)		
	Stockholders' equity:		
Class A common stock, \$0.001 par value: Authorized - 1.0 billion shares;			
Issued and outstanding - 230.3 million and 228.3 million shares, respectively	230		228
Class B-1 common stock, \$0.001 par value: Authorized - 75.0 million shares;			
Issued and outstanding - 37.8 million shares	38		38
Class B-2 common stock, \$0.000001 par value: Authorized - 75.0 million shares;			
Issued and outstanding - 37.8 million shares	—		—

Preferred stock, \$0.001 par value: Authorized - 25.0 million shares; Issued and outstanding - none	—	—
Additional paid-in-capital	2,212,713	2,152,342
(Accumulated deficit) retained earnings	(1,024,667)	232,967
Accumulated other comprehensive income (loss)	4,540	(4,098)
Total stockholders' equity	<u>1,192,854</u>	<u>2,381,477</u>
Total liabilities and stockholders' equity	<u>\$ 5,426,561</u>	<u>\$ 6,612,829</u>

See accompanying notes to consolidated financial statements.

PETCO HEALTH AND WELLNESS COMPANY, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except per share amounts) (Unaudited)

		<u>Thirteen weeks ended</u>		<u>October</u>	<u>October</u>	<u>Thirty-nine</u>
		<u>October</u>	<u>October</u>	<u>29,</u>	<u>29,</u>	<u>weeks</u>
		<u>28,</u>	<u>2023</u>	<u>2022</u>	<u>2023</u>	<u>ended</u>
		<u>2023</u>	<u>2023</u>	<u>2022</u>	<u>2023</u>	<u>October</u>
		<u>2023</u>	<u>2023</u>	<u>2022</u>	<u>2023</u>	<u>28,</u>
		<u>2023</u>	<u>2023</u>	<u>2022</u>	<u>2023</u>	<u>2023</u>
	Net sales:					
Products	\$ 1,257,803	\$ 1,295,771	\$ 3,852,997	\$ 3,868,659		
Services and other	236,363	205,449	727,811	589,349		
Total net sales	1,494,166	1,501,220	4,580,808	4,458,008		
	Cost of sales:					
Products	787,994	759,303	2,366,472	2,229,311		
Services and other	156,171	144,240	466,849	428,869		
Total cost of sales	944,165	903,543	2,833,321	2,658,180		
Gross profit	550,001	597,677	1,747,487	1,799,828		
Selling, general and administrative expenses	559,611	549,622	1,705,443	1,651,829		
Goodwill impairment	1,222,524	—	1,222,524	—		
Operating (loss) income	(1,232,134)	48,055	(1,180,480)	147,999		
Interest income	(1,139)	(130)	(3,079)	(287)		
Interest expense	36,557	27,307	111,251	68,761		
Loss on partial extinguishment of debt	174	—	920	—		
Other non-operating (income) loss	(113)	(576)	(4,727)	9,369		
(Loss) income before income taxes and income from equity method investees	(1,267,613)	21,454	(1,284,845)	70,156		
Income tax (benefit) expense	(22,902)	4,161	(17,178)	20,799		
Income from equity method investees	(3,574)	(2,627)	(10,032)	(7,821)		
Net (loss) income	(1,241,137)	19,920	(1,257,635)	57,178		
Net loss attributable to noncontrolling interest	—	—	—	(891)		
Net (loss) income attributable to Class A and B-1 common stockholders	\$ (1,241,137)	\$ 19,920	\$ (1,257,635)	\$ 58,069		
	Net (loss) income per Class A and B-1 common share:					
Basic	\$ (4.63)	\$ 0.07	\$ (4.71)	\$ 0.22		
Diluted	\$ (4.63)	\$ 0.07	\$ (4.71)	\$ 0.22		
	Weighted average shares used in computing					

net
(loss)
income
per
Class
A
and
B-1
common
share:

Basic	267,852	265,689	267,167	265,390
Diluted	267,852	265,935	267,167	265,824

See accompanying notes to consolidated financial statements.

PETCO HEALTH AND WELLNESS COMPANY, INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE (LOSS) INCOME
(In thousands) (Unaudited)

		<u>Thirteen weeks ended</u>		October	Thirty-nin
		October	October	29,	weeks
		28,	29,	2022	ended
		2023	2023	2022	October
					28,
					2023
Net (loss) income	\$ (1,241,137)	\$ 19,920	\$ (1,257,635)	\$ 57,178	
Net loss attributable to noncontrolling interest	—	—	—	(891)	
Net (loss) income attributable to Class A and B-1 common stockholders	(1,241,137)	19,920	(1,257,635)	58,069	
	Other comprehensive income (loss), net of tax:				
Foreign currency translation adjustment	407	89	2,571	(2,284)	
Unrealized gain on derivatives	2,628	—	5,559	—	
(Gains) losses on derivatives reclassified to income	(286)	—	508	—	
Total other comprehensive income (loss), net of tax	2,749	89	8,638	(2,284)	
Comprehensive (loss) income	(1,238,388)	20,009	(1,248,997)	54,894	
Comprehensive loss attributable to noncontrolling interest	—	—	—	(891)	
Comprehensive (loss) income attributable to Class A and B-1 common stockholders	<u>\$ (1,238,388)</u>	<u>\$ 20,009</u>	<u>\$ (1,248,997)</u>	<u>\$ 55,785</u>	

See accompanying notes to consolidated financial statements.

PETCO HEALTH AND WELLNESS COMPANY, INC.

CONSOLIDATED STATEMENTS OF EQUITY
(In thousands) (Unaudited)

	Common stock						Amount	Additional paid-in capital	Accumulated other comprehensive income (loss)	
	Class A		Class B-1		Class B-2					
	(shares)	(shares)	(shares)	(shares)	(shares)	(shares)				
Balance at January 28, 2023	228,338	37,791	37,791	\$ 266	\$ 2,152,342	\$ 232,967	\$ (4,098)	\$ 2,381,477	\$ —	\$ 2,381,477
Equity-based compensation expense (Note 7)	—	—	—	—	22,282	—	—	22,282	—	22,282
Net loss	—	—	—	—	—	(1,892)	—	(1,892)	—	(1,892)
Foreign currency translation adjustment, net of tax	—	—	—	—	—	—	1,057	1,057	—	1,057
Unrealized loss on derivatives (Note 5), net of tax	—	—	—	—	—	—	(984)	(984)	—	(984)
Losses on derivatives reclassified to income (Note 5), net of tax	—	—	—	—	—	—	433	433	—	433
Issuance of common stock, net of tax withholdings	727	—	—	1	(1,254)	—	—	(1,253)	—	(1,253)
Balance at April 29, 2023	<u>229,065</u>	<u>37,791</u>	<u>37,791</u>	<u>\$ 267</u>	<u>\$ 2,173,370</u>	<u>\$ 231,075</u>	<u>\$ (3,592)</u>	<u>\$ 2,401,120</u>	<u>\$ —</u>	<u>\$ 2,401,120</u>
Equity-based compensation expense (Note 7)	—	—	—	—	24,322	—	—	24,322	—	24,322
Net loss	—	—	—	—	—	(14,606)	—	(14,606)	—	(14,606)
Foreign currency translation adjustment, net of tax	—	—	—	—	—	—	1,107	1,107	—	1,107
Unrealized gain on derivatives (Note 5), net of tax	—	—	—	—	—	—	3,915	3,915	—	3,915
Losses on derivatives reclassified to income (Note 5), net of tax	—	—	—	—	—	—	361	361	—	361
Issuance of common stock, net of tax withholdings	761	—	—	1	(1,457)	—	—	(1,456)	—	(1,456)
Balance at July 29, 2023	<u>229,826</u>	<u>37,791</u>	<u>37,791</u>	<u>\$ 268</u>	<u>\$ 2,196,235</u>	<u>\$ 216,470</u>	<u>\$ 1,791</u>	<u>\$ 2,414,764</u>	<u>\$ —</u>	<u>\$ 2,414,764</u>
Equity-based compensation expense (Note 7)	—	—	—	—	18,678	—	—	18,678	—	18,678
Net loss	—	—	—	—	—	(1,241,137)	—	(1,241,137)	—	(1,241,137)
Foreign currency translation adjustment, net of tax	—	—	—	—	—	—	407	407	—	407
Unrealized gain on derivatives (Note 5), net of tax	—	—	—	—	—	—	2,628	2,628	—	2,628
Gains on derivatives reclassified to income (Note 5), net of tax	—	—	—	—	—	—	(286)	(286)	—	(286)
Issuance of common stock, net of tax withholdings	467	—	—	—	(2,200)	—	—	(2,200)	—	(2,200)
Balance at October 28, 2023	<u>230,293</u>	<u>37,791</u>	<u>37,791</u>	<u>\$ 268</u>	<u>\$ 2,212,713</u>	<u>\$ (1,024,667)</u>	<u>\$ 4,540</u>	<u>\$ 1,192,854</u>	<u>\$ —</u>	<u>\$ 1,192,854</u>

	Common stock						Amount	Additional paid-in capital	Accumulated other comprehensive income (loss)	
	Class A		Class B-1		Class B-2					
	(shares)	(shares)	(shares)	(shares)	(shares)	(shares)				
Balance at January 29, 2022	227,187	37,791	37,791	\$ 265	\$ 2,133,821	\$ 142,166	\$ (2,238)	\$ 2,274,014	\$ (18,195)	\$ 2,255,819
Equity-based compensation expense (Note 7)	—	—	—	—	12,055	—	—	12,055	—	12,055
Net income	—	—	—	—	—	24,693	—	24,693	(891)	23,802
Foreign currency translation adjustment, net of tax	—	—	—	—	—	—	(1,598)	(1,598)	—	(1,598)
Issuance of common stock, net of tax withholdings	291	—	—	—	(2,371)	—	—	(2,371)	—	(2,371)
Balance at April 30, 2022	<u>227,478</u>	<u>37,791</u>	<u>37,791</u>	<u>\$ 265</u>	<u>\$ 2,143,505</u>	<u>\$ 166,859</u>	<u>\$ (3,836)</u>	<u>\$ 2,306,793</u>	<u>\$ (19,086)</u>	<u>\$ 2,287,707</u>
Equity-based compensation expense (Note 7)	—	—	—	—	13,422	—	—	13,422	—	13,422
Net income	—	—	—	—	—	13,456	—	13,456	—	13,456
Foreign currency translation adjustment, net of tax	—	—	—	—	—	—	(775)	(775)	—	(775)
Investment in veterinary joint venture	—	—	—	—	(54,086)	—	—	(54,086)	19,086	(35,000)
Issuance of common stock, net of tax withholdings	431	—	—	1	335	—	—	336	—	336
Balance at July 30, 2022	<u>227,909</u>	<u>37,791</u>	<u>37,791</u>	<u>\$ 266</u>	<u>\$ 2,103,176</u>	<u>\$ 180,315</u>	<u>\$ (4,611)</u>	<u>\$ 2,279,146</u>	<u>\$ —</u>	<u>\$ 2,279,146</u>
Equity-based compensation expense (Note 7)	—	—	—	—	16,069	—	—	16,069	—	16,069
Net income	—	—	—	—	—	19,920	—	19,920	—	19,920
Foreign currency translation adjustment, net of tax	—	—	—	—	—	—	89	89	—	89
Deferred tax effect of investment in veterinary joint venture	—	—	—	—	12,807	—	—	12,807	—	12,807

Issuance of common stock, net of tax withholdings	34	—	—	—	(122)	—	—	(122)	—	(122)
Balance at October 29, 2022	<u>227,943</u>	<u>37,791</u>	<u>37,791</u>	<u>\$ 266</u>	<u>\$ 2,131,930</u>	<u>\$ 200,235</u>	<u>\$ (4,522)</u>	<u>\$ 2,327,909</u>	<u>\$ —</u>	<u>\$ 2,327,909</u>

See accompanying notes to consolidated financial statements.

PETCO HEALTH AND WELLNESS COMPANY, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands) (Unaudited)

		<u>Thirty-nine weeks ended</u>	
		<u>October</u> <u>28,</u> <u>2023</u>	<u>October</u> <u>29,</u> <u>2022</u>
	Cash flows from operating activities:		
Net (loss) income	\$	(1,257,635)	\$ 57,178
	Adjustments to reconcile net (loss) income to net cash provided by operating activities:		
Depreciation and amortization		148,593	143,599
Amortization of debt discounts and issuance costs		3,658	3,694
Provision for deferred taxes		(35,164)	(6,413)
Equity-based compensation		64,431	40,892
Impairments, write-offs and losses on sale of fixed and other assets		2,202	2,299
Loss on partial extinguishment of debt		920	—
Amounts reclassified out of accumulated other comprehensive income (loss)		674	—
Income from equity method investees		(10,032)	(7,821)
Goodwill impairment		1,222,524	—
Non-cash operating lease costs		316,355	316,492
Other non-operating (income) loss		(4,727)	9,369
	Changes in assets and liabilities:		
Receivables		(600)	9,171
Merchandise inventories		(77,718)	(48,314)
Prepaid expenses and other assets		(6,004)	(2,536)
Accounts payable and book overdrafts		105,421	(19,381)
Accrued salaries and employee benefits		11,586	(16,160)
Accrued expenses and other liabilities		(1,098)	12,110
Operating lease liabilities		(312,935)	(282,954)
Other long-term liabilities		(1,755)	(1,762)
Net cash provided by operating activities		168,696	209,463
	Cash flows from investing activities:		
Cash paid for fixed assets		(176,532)	(212,074)
Cash paid for acquisitions, net of cash acquired		(4,495)	(7,750)
Cash paid for interest in veterinary joint venture		—	(35,000)
Proceeds from investment		24,878	—
Proceeds from sale of assets		—	2,127
Net cash used in investing activities		(156,149)	(252,697)
	Cash flows		

	from financing activities:		
Borrowings under long-term debt agreements		—	123,000
Repayments of long-term debt		(75,000)	(135,750)
Payments for finance lease liabilities		(4,627)	(4,174)
Proceeds from employee stock purchase plan and stock option exercises		3,324	3,472
Tax withholdings on stock-based awards		(7,737)	(13,581)
Net cash used in financing activities		(84,040)	(27,033)
Net decrease in cash, cash equivalents and restricted cash		(71,493)	(70,267)
Cash, cash equivalents and restricted cash at beginning of period		213,727	221,890
Cash, cash equivalents and restricted cash at end of period		\$ 142,234	\$ 151,623
	Supplemental cash flow disclosures:		
Interest paid, net	\$	107,229	\$ 59,608
Capitalized interest	\$	806	\$ 954
Income taxes paid	\$	31,261	\$ 9,598
	Supplemental non-cash investing and financing activities disclosure:		
Accounts payable and accrued expenses for capital expenditures	\$	26,621	\$ 33,107

See accompanying notes to consolidated financial statements.

PETCO HEALTH AND WELLNESS COMPANY, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Summary of Significant Accounting Policies

Basis of Presentation

Petco Health and Wellness Company, Inc. (together with its consolidated subsidiaries, the “Company”) is a category-defining health and wellness company focused on improving the lives of pets, pet parents, and its own partners. The Company manages its business as one reportable operating segment.

In the opinion of management, the accompanying consolidated financial statements contain all adjustments necessary for a fair presentation as prescribed by accounting principles generally accepted in the United States (“GAAP”). All adjustments were comprised of normal recurring adjustments, except as noted in these Notes to Consolidated Financial Statements.

There have been no significant changes from the significant accounting policies disclosed in Note 1 of the Notes to Consolidated Financial Statements included in the Company’s Annual Report on Form 10-K for the fiscal year ended January 28, 2023.

The accompanying consolidated financial statements have been prepared in accordance with GAAP for interim financial information and the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. Interim financial results are not necessarily indicative of results anticipated for the full year. The accompanying consolidated financial statements and these Notes to Consolidated Financial Statements should be read in conjunction with the audited consolidated financial statements and Notes to Consolidated Financial Statements included in the Company’s Annual Report on Form 10-K for the fiscal year ended January 28, 2023, from which the prior year balance sheet information herein was derived.

Use of Estimates

The preparation of these consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting periods. These estimates are based on information that is currently available and on various other assumptions that are believed to be reasonable under the circumstances. Actual results could vary from those estimates under different assumptions or conditions.

Veterinary Joint Venture

The Company previously held a 50% investment in a joint venture with a domestic partner to build and operate veterinary clinics in Petco locations. The joint venture was a variable interest entity for which the Company was the primary beneficiary, and accordingly, the joint venture’s results of operations and statements of financial position were included in the Company’s consolidated financial statements during fiscal 2022. In May 2022, the Company completed the purchase of the remaining 50% of the issued and outstanding membership interests of the joint venture, which is now a wholly owned subsidiary of the Company, for cash consideration of \$35.0 million. Direct transaction costs related to this purchase were not material.

Derivative Instruments

In November 2022, the Company entered into a series of interest rate cap agreements to limit the maximum interest on a portion of the Company’s variable-rate debt and decrease its exposure to interest rate variability relating to the three-month Secured Overnight Financing Rate as published by CME Group (“Term SOFR”). The interest rate caps became effective December 30, 2022 and expire on December 31, 2024. The interest rate caps are

accounted for as cash flow hedges, and changes in the fair value of the interest rate caps are reported as a component of accumulated other comprehensive income (loss) ("AOCI").

In March 2023, the Company entered into an interest rate collar agreement to limit the maximum interest on a portion of the Company's variable-rate debt and decrease its exposure to interest rate variability relating to three-month Term SOFR. The interest rate collar became effective March 31, 2023 and expires on March 31, 2026. The interest rate collar is accounted for as a cash flow hedge, and changes in the fair value of the interest rate collar are reported as a component of AOCI.

In June 2023, the Company entered into an interest rate collar agreement to limit the maximum interest on a portion of the Company's variable-rate debt and decrease its exposure to interest rate variability relating to three-month Term SOFR. The interest rate collar became effective September 30, 2023 and expires on December 31, 2026. The interest rate collar is accounted for as a cash flow hedge, and changes in the fair value of the interest rate collar are reported as a component of AOCI.

Cash and Cash Equivalents

The following table provides a reconciliation of cash, cash equivalents and restricted cash reported in the consolidated balance sheets to the total amounts reported in the consolidated statements of cash flows (in thousands):

		October 28, 2023	January 28, 2023
Cash and cash equivalents	\$	139,782	\$ 201,901
Restricted cash included in other current assets		2,452	11,826
Total cash, cash equivalents and restricted cash in the statement of cash flows	\$	<u>142,234</u>	<u>\$ 213,727</u>

2. Revenue Recognition

Net sales by product type and services were as follows (in thousands):

	Thirteen weeks ended		Thirty-nine weeks ended	
	October 28, 2023	October 29, 2022	October 28, 2023	October 28, 2023
Consumables	\$ 733,277	\$ 720,512	\$ 2,230,405	\$ 2,093,510
Supplies and companion animals	524,526	575,259	1,622,592	1,775,149
Services and other	236,363	205,449	727,811	589,349
Net sales	<u>\$ 1,494,166</u>	<u>\$ 1,501,220</u>	<u>\$ 4,580,808</u>	<u>\$ 4,458,008</u>

3. Goodwill

The changes in the carrying amount of the Company's goodwill were as follows (in thousands):

	Beginning balance:
Goodwill	\$ 3,001,904
Accumulated impairment	(807,963)
Goodwill, net	<u>\$ 2,193,941</u>
Additions from acquisitions	4,830
Impairment	(1,222,524)
	Ending balance:
Goodwill	\$ 3,006,734
Accumulated impairment	(2,030,487)
Goodwill, net	<u>\$ 976,247</u>

Thirty-weeks ended October 28, 2023

The Company has one reporting unit. The Company performs its annual impairment test during the fourth quarter of each fiscal year or more frequently when warranted by events or changes in circumstances. During the third quarter of fiscal 2023, the Company concluded that indicators of impairment existed due to declines in the Company's share price, as well as current macroeconomic conditions, and performed an interim impairment test. The fair value of the Company's reporting unit was estimated by management with the assistance of a third-party valuation specialist. Fair value estimates used in the quantitative impairment test were calculated using a combination of discounted cash flow analysis and a public company analysis. The discounted cash flow analysis measures the value of an asset by the present value of its future estimated cash flows. The Company makes estimates and assumptions about sales, gross margins, selling, general and administrative percentages and profit margins, based on budgets and forecasts, business plans, economic projections, anticipated future cash flows, and marketplace data. The public company analysis analyzes transactional and financial data of publicly traded companies to develop valuation multiples. These multiples are then applied to the Company to develop an indication of fair value.

Significant assumptions used in the determination of fair value of the reporting unit generally include prospective financial information, discount rates, terminal growth rates and earnings multiples. The discounted cash flow model used to determine the fair value of the reporting unit during the third quarter of fiscal 2023 reflected the Company's most recent cash flow projections, a discount rate of 16.4% and a terminal growth rate of 3%. The reporting unit fair value measurement is classified as Level 3 in the fair value hierarchy because it involves significant unobservable inputs.

As a result of the impairment test, the Company concluded that the carrying value of the Company's reporting unit exceeded its fair value and recorded a pre-tax goodwill impairment charge of \$1,222.5 million for the thirteen week period ended October 28, 2023. This charge was recorded in goodwill impairment in the consolidated statements of operations.

4. Senior Secured Credit Facilities

On March 4, 2021, the Company entered into a \$1,700.0 million secured term loan facility maturing on March 4, 2028 (the "First Lien Term Loan") and a secured asset-based revolving credit facility with availability of up to \$500.0 million, subject to a borrowing base, maturing on March 4, 2026 (the "ABL Revolving Credit Facility").

As of October 28, 2023, the Company was in compliance with its covenants under the First Lien Term Loan and the ABL Revolving Credit Facility.

Term Loan Facilities

On December 12, 2022, the Company amended the First Lien Term Loan to replace the LIBOR-based rate with a SOFR-based rate as the interest rate benchmark. Interest on the First Lien Term Loan is based on, at the Company's option, either a base rate or Term SOFR plus the credit spread adjustment recommended by the Alternative Reference Rates Committee ("Adjusted Term SOFR"), subject to a 0.75% floor, payable upon maturity of the SOFR contract, in either case plus the applicable rate. The base rate is the greater of the bank prime rate, federal funds effective rate plus 0.5% or Adjusted Term SOFR plus 1.0%. The applicable rate is 2.25% per annum for a base rate loan or 3.25% per annum for an Adjusted Term SOFR loan. Principal and interest payments commenced on June 30, 2021. Principal payments are normally \$4.25 million quarterly.

The Company voluntarily prepaid \$35.0 million, \$25.0 million and \$15.0 million of the First Lien Term Loan using existing cash on hand in March 2023, May 2023, and August 2023, respectively. The repayments were applied to the remaining principal payments in order of scheduled payment date and, as a result, the entire remaining balance was included in senior secured credit facilities, net, excluding current portion in the consolidated balance sheets as of October 28, 2023. The Company accounted for the repayments as partial extinguishments and recognized losses on debt extinguishment of \$0.2 million and \$0.9 million during the thirteen and thirty-nine week periods ended October 28, 2023, respectively.

As of October 28, 2023, the outstanding principal balance of the First Lien Term Loan was \$1,595.3 million (\$1,577.6 million, net of the unamortized discount and debt issuance costs). As of January 28, 2023, the outstanding principal balance of the First Lien Term Loan was \$1,670.3 million (\$1,648.9 million, net of the unamortized discount and debt issuance costs). The weighted average interest rate on the borrowings outstanding was 9.0% and 8.2% as of October 28, 2023 and January 28, 2023, respectively. Debt issuance costs are being amortized over the contractual term to interest expense using the effective interest rate in effect at issuance. As of October 28, 2023 and January 28, 2023, the estimated fair value of the First Lien Term Loan was approximately \$1,553.4 million and \$1,649.4 million, respectively, based upon Level 2 fair value hierarchy inputs.

Revolving Credit Facilities

As of October 28, 2023 and January 28, 2023, no amounts were outstanding under the ABL Revolving Credit Facility. As of October 28, 2023, \$446.6 million was available under the ABL Revolving Credit Facility, which is net of \$53.4 million of outstanding letters of credit issued in the normal course of business and no borrowing base reduction for a shortfall in qualifying assets. As of October 28, 2023 and January 28, 2023, unamortized debt issuance costs of \$2.7 million and \$3.6 million, respectively, relating to the ABL Revolving Credit Facility were outstanding and were being amortized using the straight-line method over the remaining term of the agreement.

The ABL Revolving Credit Facility has availability up to \$500.0 million and a \$150.0 million letter of credit sub-facility. The availability is limited to a borrowing base, which allows borrowings of up to 90% of eligible accounts receivable plus 90% of the net orderly liquidation value of eligible inventory plus up to \$50.0 million of qualified cash of the Company to which the Company and guarantors have no access, less reserves as determined by the administrative agent. Letters of credit reduce the amount available to borrow under the ABL Revolving Credit Facility by their face value.

On December 12, 2022, the Company amended the ABL Revolving Credit Facility to replace the LIBOR-based rate with a SOFR-based rate as the interest rate benchmark. Interest on the ABL Revolving Credit Facility is based on, at the Company's option, either the base rate or Adjusted Term SOFR subject to a floor of 0%, in either case, plus an applicable margin. The applicable margin is currently equal to 25 basis points in the case of base rate loans and 125 basis points in the case of Adjusted Term SOFR loans.

The applicable margin is adjusted quarterly based on the average historical excess availability as a percentage of the Line Cap, which represents the lesser of the aggregate ABL Revolving Credit Facility and the borrowing base, as follows:

	Average Historical Excess Availability	Applicable Margin for Adjusted Term SOFR Loans	Applicable Margin for Base Rate Loans
Less than 33.3% of the Line Cap		1.75%	0.75%
Less than 66.7% but greater than or equal to 33.3% of the Line Cap		1.50%	0.50%
Greater than or equal to 66.7% of the Line Cap		1.25%	0.25%

The ABL Revolving Credit Facility is subject to an unused commitment fee. If the actual daily utilized portion exceeds 50%, the unused commitment fee is 0.25%. Otherwise, the unused commitment fee is 0.375% and is not dependent upon excess availability.

5. Derivative Instruments

The interest rate caps and collars are accounted for as cash flow hedges because they are expected to be highly effective in hedging variable rate interest payments. Changes in the fair value of the cash flow hedges are reported as a component of AOCI. As of October 28, 2023, AOCI included unrealized gains of \$5.3 million (\$4.0 million, net of tax). Approximately \$0.4 million of pre-tax gains deferred in AOCI were reclassified to interest expense during the thirteen week period ended October 28, 2023. Approximately \$0.7 million of pre-tax losses deferred in AOCI were reclassified to interest expense during the thirty-nine week period ended October 28, 2023. As of January 28, 2023, AOCI included unrealized losses of \$2.7 million (\$2.1 million, net of tax). The Company currently estimates that \$3.2 million of losses related to trade date costs on its cash flow hedges that are currently deferred in AOCI will be reclassified to interest expense in the consolidated statement of operations within the next twelve months. This estimate could vary based on actual amounts as a result of changes in market conditions.

The cash flow hedges are reflected in the Company's consolidated balance sheets as follows (in thousands):

	Assets (Liabilities)	Balance sheet location	October 28, 2023	January 28, 2023
Current asset portion of cash flow hedges	Other current assets	\$ 5,057	\$ —	
Non-current asset portion of cash flow hedges	Other long-term assets	1,691		—
Current liability portion of cash flow hedges	Accrued expenses and other liabilities	—	(1,176)	
Non-current liability portion of cash flow hedges	Other long-term liabilities	—	(1,717)	
Total cash flow hedges		\$ 6,748	\$ (2,893)	

6. Fair Value Measurements

Assets and Liabilities Measured on a Recurring Basis

The following table presents information about assets and liabilities that are measured at fair value on a recurring basis and indicate the fair value hierarchy of the valuation techniques utilized to determine such fair value (in thousands):

	Assets (liabilities):	October 28, 2023	
		Level 1	Level 23
Money market mutual funds	\$ 85,965	\$ —	\$ —
Investments of officers' life insurance	\$ —	\$ 12,362	\$ —

	January 28, 2023			
		Level 1	Level 2	Level 3
Assets (liabilities):				
Money market mutual funds	\$ 156,626	\$ —	\$ —	\$ —
Investments of officers' life insurance	\$ —	\$ 13,112	\$ —	\$ —
Non-qualified deferred compensation plan	\$ —	\$ (18,464)	\$ —	\$ —
Investment in Rover Group, Inc.	\$ 20,152	\$ —	\$ —	\$ —

The fair value of money market mutual funds is based on quoted market prices, such as quoted net asset values published by the fund as supported in an active market. Money market mutual funds included in the Company's cash and cash equivalents were \$85.0 million and \$145.5 million as of October 28, 2023 and January 28, 2023, respectively. Also included in the Company's money market mutual funds balances were \$1.0 million and \$11.1 million as of October 28, 2023 and January 28, 2023, respectively, which relate to the Company's restricted cash, and are included in other current assets in the consolidated balance sheets.

The Company maintains a deferred compensation plan for key executives and other members of management, which is funded by investments in officers' life insurance. The fair value of this obligation is based on participants' elected investments, which reflect the closing market prices of similar assets.

In April 2023, the Company sold its interest in Rover Group, Inc. Class A common stock to a buyer at a price determined based on the daily volume weighted average price, in addition to a premium, over an agreed upon period. The cash proceeds were received throughout fiscal 2023, with the final payment being received in August 2023. The Company's interest in the unsettled cash proceeds were remeasured at fair value at each reporting period, and the resulting gains or losses were included in other non-operating income in the consolidated statements of operations.

Assets Measured on a Non-Recurring Basis

The Company's non-financial assets, which primarily consist of goodwill, other intangible assets, fixed assets and equity and other investments, are reported at carrying value, or at fair value as of the date of the Company's acquisition of Petco Holdings, Inc. LLC on January 26, 2016, and are not required to be measured at fair value on a recurring basis. However, on a periodic basis (at least annually for goodwill and indefinite-lived intangibles or whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable), non-financial assets are assessed for impairment. If impaired, the carrying values of the assets are written down to fair value using Level 3 inputs.

The Company's trade name has an indefinite life. The Company performs its annual impairment test during the fourth quarter of each fiscal year, or more frequently when warranted by events or changes in circumstances. During the third quarter of fiscal 2023, the Company concluded that indicators of impairment existed due to declines in the Company's share price, as well as current macroeconomic conditions, and performed interim impairment tests of its goodwill and indefinite-lived trade name. Refer to Note 3 for further discussion of the results of impairment testing performed on the Company's goodwill.

The fair value of the Company's trade name was estimated by management with the assistance of a third-party valuation specialist using the relief from royalty valuation method, which estimates the hypothetical royalties that would have to be paid if the trade name was not owned. The fair value of the Company's trade name reflected the Company's most recent revenue projections, a discount rate of 17.4% and a terminal growth rate of 3%. The Company concluded that the fair value of its trade name exceeded its carrying value, and therefore no trade name impairment charge was recorded during the third quarter of fiscal 2023. The Company's trade name fair value measurement is classified as Level 3 in the fair value hierarchy because it involves significant unobservable inputs.

There were no indications of impairment of the Company's other intangible assets or equity and other investments during the thirteen or thirty-nine week periods ended October 28, 2023. There were no triggering events identified and no indication of impairment of the Company's goodwill, indefinite-lived trade name, other intangible assets or equity and other investments during the thirteen or thirty-nine week periods ended October 29, 2022. During the thirteen and thirty-nine week periods ended October 28, 2023, the Company recorded fixed asset and right-of-use asset impairment charges of \$1.0 million and \$2.1 million, respectively. During the thirteen and thirty-

nine week periods ended October 29, 2022, the Company recorded fixed asset and right-of-use asset impairment charges of \$0.8 million and \$1.8 million, respectively.

7. Stockholders' Equity

Equity-Based Compensation

Equity-based compensation awards under the Company's current equity incentive plan (the "2021 Equity Incentive Plan") include restricted stock units ("RSUs," which include performance-based stock units), restricted stock awards ("RSAs"), non-qualified stock options, and other equity compensation awards. The Company also has an employee stock purchase plan ("ESPP").

The Company's controlling parent, Scooby LP, also maintains an incentive plan (the "2016 Incentive Plan") under which it has awarded partnership unit awards to certain current and former employees, consultants, and non-employee directors of the Company that are restricted profit interests in Scooby LP subject to a distribution threshold ("Series C Units").

The following table summarizes the Company's equity-based compensation expense by award type (in thousands):

	Thirteen weeks ended		October		Thirty-nine weeks ended
	October 28, 2023	October 29, 2022	October 28, 2023	October 29, 2022	October 29, 2023
RSUs and RSAs	\$ 12,917	\$ 9,602	\$ 44,191	\$ 24,759	
Options	4,098	1,820	14,100	5,666	
ESPP	264	315	1,118	927	
Other awards	904	4,038	5,022	9,540	
Total equity-based compensation expense	\$ 18,183	\$ 15,775	\$ 64,431	\$ 40,892	

Activity under the 2021 Equity Incentive Plan was as follows (shares and dollars in thousands):

	RSUs and RSAs	Options
Nonvested/outstanding, January 28, 2023	7,802	7,814
Granted	7,368	—
Vested and delivered/exercised	(2,582)	—
Forfeited/expired	(1,680)	(560)
Nonvested/outstanding, October 28, 2023	10,908	7,254
Unrecognized compensation expense as of October 28, 2023	\$ 91,974	\$ 15,654
	Weighted average remaining expense period as of October 28, 2023	1.1 years

RSA activity has not been material and relates to an RSA of Class A common stock granted to an executive in March 2021. For this grant, 50% of the RSA vested on each of the first two anniversaries of the grant date. Unvested RSAs were not considered participating securities for earnings per share purposes, as any related dividends were forfeitable.

The ESPP allows eligible employees to contribute up to 15% of their base earnings towards purchases of Class A common stock, subject to an annual maximum. The purchase price will be 85% of the lower of (i) the fair

market value of the stock on the associated lookback date and (ii) the fair market value of the stock on the last day of the related purchase period.

Series C Unit activity under the 2016 Incentive Plan was as follows (in thousands):

	Units
Outstanding, January 28, 2023	201,359
Granted	—
Forfeited	(1,557)
Outstanding, October 28, 2023	<u>199,802</u>
Vested, October 28, 2023	<u>175,829</u>

No additional Series C Units have been or will be awarded following the Company's initial public offering. As of October 28, 2023, unrecognized compensation expense related to the unvested portion of Scooby LP's Series C Units was \$4.3 million, which is expected to be recognized over a weighted average period of 0.9 years. In addition to acceleration upon a change in control, a portion of grantees' Series C Units may vest upon certain levels of direct or indirect sales by Scooby LP of the Company's Class A common stock, and all unvested Series C Units will fully accelerate in the event Scooby LP sells 90% of its direct or indirect holdings of the Company's Class A common stock.

(Loss) Income Per Share

Potentially dilutive securities include potential Class A common shares related to outstanding stock options, unvested RSUs and RSAs, and the ESPP, calculated using the treasury stock method. The calculation of diluted shares outstanding excludes securities where the combination of the exercise or purchase price (in the case of options and the ESPP) and the associated unrecognized compensation expense is greater than the average market price of Class A common shares because the inclusion of these securities would be anti-dilutive.

All outstanding equity awards were excluded from the calculation of diluted loss per Class A and B-1 common share in the thirty-nine weeks ended October 28, 2023, as their effect would be antidilutive in a net loss period.

There were approximately 5.3 million potential shares that were anti-dilutive and excluded from the computation of diluted shares outstanding during the thirty-nine weeks ended October 29, 2022.

8. Commitments and Contingencies

The Company is involved in legal proceedings and is subject to other claims and litigation arising in the ordinary course of its business. The Company has made accruals with respect to certain of these matters, where appropriate, which are reflected in the Company's consolidated financial statements but are not, individually or in the aggregate, considered material. For other matters, the Company has not made accruals because management has not yet determined that a loss is probable or because the amount of loss cannot be reasonably estimated. While the ultimate outcome of the matters cannot be determined, the Company currently does not expect that these matters will have a material adverse effect on its consolidated financial statements. The outcome of any litigation is inherently uncertain, however, and if decided adversely to the Company, or if the Company determines that settlement of particular litigation is appropriate, the Company may be subject to liability that could have a material adverse effect on its consolidated financial statements.

Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our consolidated financial statements and the accompanying notes included elsewhere in this Quarterly Report on Form 10-Q (this “Form 10-Q”), as well as the corresponding Management’s Discussion and Analysis of Financial Condition and Results of Operations contained in our Annual Report on Form 10-K for the fiscal year ended January 28, 2023 (the “2022 Form 10-K”). The discussion and analysis below contains certain forward-looking statements about our business and operations that are subject to the risks, uncertainties, and other factors referred to in Part II, Item 1A, “*Risk Factors*” of this Form 10-Q. These risks, uncertainties, and other factors could cause our actual results to differ materially from those expressed in, or implied by, the forward-looking statements. The risks described in this Form 10-Q and in other documents we file from time to time with the U.S. Securities and Exchange Commission (the “SEC”), including the section entitled “Forward-Looking Statements” in this Form 10-Q, should be carefully reviewed. All amounts herein are unaudited.

Overview

Petco Health and Wellness Company, Inc. (“Petco”, the “Company”, “we”, “our” and “us”) is a category-defining health and wellness company focused on improving the lives of pets, pet parents, and our own partners. We have consistently set new standards in pet care while delivering comprehensive pet wellness products, services and solutions, and creating communities that deepen the pet-pet parent bond. In recent years, we have transformed our business from a successful yet traditional retailer to a disruptive, fully integrated, omnichannel provider of holistic pet health and wellness offerings, including premium products, services, and veterinary care. Through our integrated ecosystem, we provide our 25 million total active customers with a comprehensive offering of differentiated products and services to fulfill their pets’ health and wellness needs through our more than 1,500 pet care centers in the U.S., Mexico, and Puerto Rico, including a growing network of more than 275 in-store veterinary hospitals, our digital channel, and our flexible fulfillment options.

Our multicategory, go-to-market strategy integrates our strong digital assets with our nationwide physical footprint to meet the needs of pet parents who are looking for a single source for all their pet’s needs. Our e-commerce site and personalized mobile app serve as hubs for pet parents to manage their pets’ health, wellness, and merchandise needs, while enabling them to shop wherever, whenever, and however they want. By leveraging our extensive physical network of pet care centers, we are able to offer our comprehensive product and service offering in a localized manner with a meaningful last-mile advantage over much of our competition. The full value of our health and wellness ecosystem is realized for customers through our Vital Care Premier membership program. From the nutrition and supplies pets need each day, to the services that keep them at optimal health, Vital Care Premier makes it easier and more affordable for pet parents to care for their pet’s whole health all in one place. Vital Care Premier memberships are at the top of our integrated loyalty programs, followed by Vital Care Core and our perks programs that provide rewards for frequent purchasing.

We strive to be a truly unique company, one that is saving and improving millions of pet lives and tangibly improving the lives of pet parents and the partners who work for us, while at the same time executing our differentiated strategy with excellence. In tandem with Petco Love, a life-changing independent nonprofit organization, we work with and support thousands of local animal welfare groups across the country and, through in-store adoption events, we have helped find homes for nearly 7 million animals.

Macroeconomic factors, including rising interest rates, inflationary pressures, supply chain constraints, and global economic and geopolitical developments have varying impacts on our results of operations, such as decreases in sales of discretionary items like supplies, that are difficult to isolate and quantify. We cannot predict the duration or ultimate severity of these macroeconomic factors or the ultimate impact on our operations and liquidity. Please refer to the risk factors referred to in Part II, Item 1A, “*Risk Factors*” of this Form 10-Q.

How We Assess the Performance of Our Business

In assessing our performance, we consider a variety of performance and financial measures, including the following:

Comparable Sales

Comparable sales is an important measure throughout the retail industry and includes both retail and digital sales of products and services. A new location or digital site is included in comparable sales beginning on the first

day of the fiscal month following 12 full fiscal months of operation and is subsequently compared to like time periods from the previous year. Relocated pet care centers become comparable pet care centers on the first day of operation if the original pet care center was open longer than 12 full fiscal months. If, during the period presented, a pet care center was closed, sales from that pet care center are included up to the first day of the month of closing. There may be variations in the way in which some of our competitors and other retailers calculate comparable sales. As a result, data in this filing regarding our comparable sales may not be comparable to similar data made available by other retailers.

Comparable sales allow us to evaluate how our overall ecosystem is performing by measuring the change in period-over-period net sales from locations and digital sites that have been open for the applicable period. We intend to improve comparable sales by continuing initiatives aimed to increase customer retention, frequency of visits, and basket size. General macroeconomic and retail business trends are also a key driver of changes in comparable sales.

Non-GAAP Financial Measures

Management and our board of directors review, in addition to GAAP (as defined herein) measures, certain non-GAAP financial measures, including Adjusted EBITDA, and Free Cash Flow, to evaluate our operating performance, generate future operating plans, and make strategic decisions regarding the allocation of capital. Further explanations of these non-GAAP measures, along with reconciliations to their most comparable GAAP measures, are presented below under “Reconciliation of Non-GAAP Financial Measures to GAAP Measures.”

Executive Summary

Comparing the thirteen weeks ended October 28, 2023 with the thirteen weeks ended October 29, 2022 (unless otherwise noted), our results included the following:

- a decrease in net sales from \$1.50 billion to \$1.49 billion, representing period-over-period decrease of 0.5%;
- an operating loss of \$1,232.1 million resulting primarily from goodwill impairment of \$1,222.5 million, compared to operating income of \$48.1 million in the prior year period;
- net loss attributable to Class A and B-1 common stockholders of \$1,241.1 million impacted by goodwill impairment, compared to net income attributable to Class A and B-1 common stockholders of \$19.9 million in the prior year period; and
- a decrease in Adjusted EBITDA from \$120.2 million to \$72.2 million.

Results of Operations

The following tables summarize our results of operations and the percent of net sales of line items included in our consolidated statements of operations (dollars in thousands):

	<u>Thirteen weeks ended</u>		<u>October</u>	<u>October</u>	<u>Thirty-nine</u>
	<u>October</u>	<u>October</u>	<u>28,</u>	<u>29,</u>	<u>weeks</u>
	<u>2023</u>	<u>2022</u>	<u>2023</u>	<u>2022</u>	<u>ended</u>
					<u>October</u>
					<u>29,</u>
					<u>2023</u>
	Net				
	sales:				
Products	\$ 1,257,803	\$ 1,295,771	\$ 3,852,997	\$ 3,868,659	
Services and other	236,363	205,449	727,811	589,349	
Total net sales	1,494,166	1,501,220	4,580,808	4,458,008	
	Cost				
	of				
	sales:				
Products	787,994	759,303	2,366,472	2,229,311	
Services and other	156,171	144,240	466,849	428,869	
Total cost of sales	944,165	903,543	2,833,321	2,658,180	
Gross profit	550,001	597,677	1,747,487	1,799,828	
Selling, general and administrative expenses	559,611	549,622	1,705,443	1,651,829	
Goodwill impairment	1,222,524	—	1,222,524	—	
Operating (loss) income	(1,232,134)	48,055	(1,180,480)	147,999	
Interest income	(1,139)	(130)	(3,079)	(287)	
Interest expense	36,557	27,307	111,251	68,761	
Loss on partial extinguishment of debt	174	—	920	—	
Other non-operating (income) loss	(113)	(576)	(4,727)	9,369	
(Loss) income before income taxes and income from equity method investees	(1,267,613)	21,454	(1,284,845)	70,156	
Income tax (benefit) expense	(22,902)	4,161	(17,178)	20,799	
Income from equity method investees	(3,574)	(2,627)	(10,032)	(7,821)	
Net (loss) income	(1,241,137)	19,920	(1,257,635)	57,178	
Net loss attributable to noncontrolling interest	—	—	—	(891)	
Net (loss) income attributable to Class A and B-1 common stockholders	\$ (1,241,137)	\$ 19,920	\$ (1,257,635)	\$ 58,069	

	Thirteen weeks ended		October		Thirty-nine weeks ended
	October	October	October	October	October
	28,	29,	28,	29,	29,
	2023	2022	2023	2022	2023
Net sales:					
Products	84.2%	86.3%	84.1%	86.8%	
Services and other	15.8	13.7	15.9	13.2	
Total net sales	100.0	100.0	100.0	100.0	
Cost of sales:					
Products	52.7	50.6	51.7	50.0	
Services and other	10.5	9.6	10.2	9.6	
Total cost of sales	63.2	60.2	61.9	59.6	
Gross profit	36.8	39.8	38.1	40.4	
Selling, general and administrative expenses	37.5	36.6	37.2	37.1	
Goodwill impairment	81.8	—	26.7	—	
Operating (loss) income	(82.5)	3.2	(25.8)	3.3	
Interest income	(0.1)	(0.0)	(0.1)	(0.0)	
Interest expense	2.4	1.8	2.5	1.5	
Loss on partial extinguishment of debt	0.0	—	0.0	—	
Other non-operating (income) loss	(0.0)	(0.0)	(0.2)	0.2	
(Loss) income before income taxes and income from equity method investees	(84.8)	1.4	(28.0)	1.6	
Income tax (benefit) expense	(1.5)	0.3	(0.4)	0.5	
Income from equity method investees	(0.2)	(0.2)	(0.1)	(0.2)	
Net (loss) income	(83.1)	1.3	(27.5)	1.3	
Net loss attributable to noncontrolling interest	—	—	—	(0.0)	
Net (loss) income attributable to Class A and B-1 common stockholders	(83.1)%	1.3%	(27.5)%	1.3%	

	Thirteen weeks ended		October		Thirty-nine weeks ended
	October	October	October	October	October
	28,	29,	28,	29,	29,
	2023	2022	2023	2022	2023
Operational Data:					
Comparable sales change	0.0%	4.1%	2.8%	4.3%	
Total pet care centers at end of period	1,429	1,428	1,429	1,428	
Total veterinarian practices at end of period	282	229	282	229	
Adjusted EBITDA (in thousands)	\$ 72,159	\$ 120,188	\$ 295,763	\$ 372,880	

Thirteen and Thirty-nine Weeks Ended October 28, 2023 Compared with Thirteen and Thirty-nine Weeks Ended October 29, 2022

Net Sales and Comparable Sales

	(dollars in thousands)	Thirteen weeks ended				Thirty-nine weeks ended			
		October 28, 2023	October 29, 2022		\$ Change	% Change	October 28, 2023	October 29, 2022	
Consumables	\$ 733,277	\$ 720,512	\$ 12,765	1.8%	\$ 2,230,405	\$ 2,093,510	\$ 136,895	6.5%	
Supplies and companion animals	524,526	575,259	(50,733)	(8.8%)	1,622,592	1,775,149	(152,557)	(8.6%)	
Services and other	236,363	205,449	30,914	15.0%	727,811	589,349	138,462	23.5%	

Net sales	<u>\$ 1,494,166</u>	<u>\$ 1,501,220</u>	<u>\$ (7,054)</u>	(0.5%)	<u>\$ 4,580,808</u>	<u>\$ 4,458,008</u>	<u>\$ 122,800</u>	2.8%
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Net sales decreased \$7.1 million, or 0.5%, to \$1.49 billion in the thirteen weeks ended October 28, 2023 compared to net sales of \$1.50 billion in the thirteen weeks ended October 29, 2022. Net sales increased \$122.8 million, or 2.8%, to \$4.58 billion in the thirty-nine weeks ended October 28, 2023 compared to net sales of \$4.46 billion in the thirty-nine weeks ended October 29, 2022, driven by a 2.8% increase in our comparable sales. We continue to experience momentum in consumables and services, although we have also experienced a decrease in

supplies and companion animals sales driven by softening in discretionary spend associated with the current inflationary macroeconomic environment.

The increase in consumables sales between the periods was driven in part by our investment in bringing additional brands into our consumables assortment. The decrease in supplies and companion animals sales is due to a decrease in spending on certain non-essential items. The increase in services and other was due to growth in our grooming services and veterinary business in which we now operate over 275 veterinary hospitals as well as growth in our membership offerings like Vital Care.

Service-related sales, which include veterinary hospitals, increased 14.0% and 14.6% during the thirteen and thirty-nine weeks ended October 28, 2023, respectively, reflecting expansion and maturity of our veterinary hospital footprint and growth in our veterinary and grooming business. E-commerce and digital sales increased 4.7% and 8.4% during the thirteen and thirty-nine weeks ended October 28, 2023, respectively, driven by strength in our online initiatives such as repeat delivery, same day delivery and our digital pharmacy.

We are unable to quantify certain factors impacting sales described above due to the fact that such factors are based on input measures or qualitative information that do not lend themselves to quantification.

Gross Profit

Gross profit decreased \$47.7 million, or 8.0%, to \$550.0 million in the thirteen weeks ended October 28, 2023 compared to gross profit of \$597.7 million for the thirteen weeks ended October 29, 2022. As a percentage of sales, our gross profit rate was 36.8% for the thirteen weeks ended October 28, 2023 compared with 39.8% for the thirteen weeks ended October 29, 2022. Gross profit decreased \$52.3 million, or 2.9%, to \$1,747.5 million in the thirty-nine weeks ended October 28, 2023 compared to gross profit of \$1,799.8 million for the thirty-nine weeks ended October 29, 2022. As a percentage of sales, our gross profit rate was 38.1% for the thirty-nine weeks ended October 28, 2023 compared with 40.4% for the thirty-nine weeks ended October 29, 2022. The decrease in gross profit rate between the periods was primarily due to the mix impact of higher consumables sales and softer supplies and companion animal sales as well as investments made in bringing additional brands into our consumables assortment during the thirteen and thirty-nine weeks ended October 28, 2023. Sales channel impacts driven by strength in our digital and services business (which includes the vet business) also contributed to the decrease in gross profit rate during the thirteen and thirty-nine weeks ended October 28, 2023 as compared to the prior year periods. We are unable to quantify the factors impacting gross profit rate described above due to the fact that such factors are based on input measures or qualitative information that do not lend themselves to quantification.

Selling, General and Administrative ("SG&A") Expenses

SG&A expenses increased \$10.0 million, or 1.8%, to \$559.6 million for the thirteen weeks ended October 28, 2023 compared to \$549.6 million for the thirteen weeks ended October 29, 2022. As a percentage of net sales, SG&A expenses were 37.5% for the thirteen weeks ended October 28, 2023 compared with 36.6% for the thirteen weeks ended October 29, 2022. The increase in SG&A expenses period-over-period was to support our growth as we continue to invest in infrastructure and our people. The increase included higher depreciation expense and higher equity-based compensation expense driven by additional awards issued throughout the past year.

SG&A expenses increased \$53.6 million, or 3.2%, to \$1,705.4 million for the thirty-nine weeks ended October 28, 2023 compared to \$1,651.8 million for the thirty-nine weeks ended October 29, 2022. As a percentage of net sales, SG&A expenses were 37.2% for the thirty-nine weeks ended October 28, 2023 compared with 37.1% for the thirty-nine weeks ended October 29, 2022. The increase in SG&A expenses period-over-period was to support our growth as we continue to invest in infrastructure and our people and included higher equity-based compensation expense driven by additional awards issued throughout the past year. This increase was partially offset by a decrease in advertising expenses.

Goodwill Impairment

Goodwill impairment consisted of a \$1.22 billion charge during the thirteen weeks ended October 29, 2022 as a result of performing an interim impairment test in the third quarter of fiscal 2023 due to the identification of

certain triggering events. For more information on this charge, refer to Note 3, "Goodwill," to the Notes to Consolidated Financial Statements included in Part I, Item 1 of this Form 10-Q.

Interest Expense

Interest expense increased \$9.3 million, or 33.9%, to \$36.6 million in the thirteen weeks ended October 28, 2023 compared with \$27.3 million in the thirteen weeks ended October 29, 2022. Interest expense increased \$42.5 million, or 61.8%, to \$111.3 million in the thirty-nine weeks ended October 28, 2023 compared with \$68.8 million in the thirty-nine weeks ended October 29, 2022. The increase was primarily driven by higher interest rates on the First Lien Term Loan. For more information on these obligations, refer to Note 4, "Senior Secured Credit Facilities," to the Notes to Consolidated Financial Statements included in Part I, Item 1 of this Form 10-Q.

Loss on Partial Extinguishment of Debt

Loss on partial extinguishment of debt was \$0.2 million and \$0.9 million for the thirteen and thirty-nine weeks ended October 28, 2023, respectively. This loss was recognized in conjunction with the \$35.0 million, \$25.0 million and \$15.0 million repayments on the First Lien Term Loan in March 2023, May 2023 and August 2023, respectively. There was no loss on debt extinguishment and modification for the thirty-nine weeks ended October 29, 2022. For more information regarding these activities, refer to Note 4, "Senior Secured Credit Facilities," to the Notes to Consolidated Financial Statements included in Part I, Item 1 of this Form 10-Q.

Other Non-Operating (Income) Loss

Other non-operating income was \$0.1 million and \$4.7 million for the thirteen and thirty-nine weeks ended October 28, 2023, respectively. Other non-operating income was \$0.6 million for the thirteen weeks ended October 29, 2022, and other non-operating loss was \$9.4 million for the thirty-nine weeks ended October 29, 2022. For more information regarding this activity, refer to Note 6, "Fair Value Measurements," to the Notes to Consolidated Financial Statements included in Part I, Item 1 of this Form 10-Q.

Income Tax (Benefit) Expense

Our effective tax rates were 1.8% and 1.3%, resulting in income tax benefit of \$22.9 million and \$17.2 million for the thirteen and thirty-nine weeks ended October 28, 2023, respectively, compared to effective tax rates of 17.3% and 26.4%, resulting in income tax expense of \$4.2 million and \$20.8 million for the thirteen and thirty-nine weeks ended October 29, 2022, respectively. The decrease in effective tax rates for the thirteen and thirty-nine weeks ended October 28, 2023 was primarily driven by non-deductible goodwill impaired during the third quarter in addition to a shortfall in tax deductions resulting from the exercise and vesting of equity-based compensation awards for the periods.

Reconciliation of Non-GAAP Financial Measures to GAAP Measures

The following information provides definitions and reconciliations of certain non-GAAP financial measures to the most directly comparable financial measures calculated and presented in accordance with GAAP. Such non-GAAP financial measures are not calculated in accordance with GAAP and should not be considered superior to, as a substitute for or alternative to, and should be considered in conjunction with, the most comparable GAAP measures. The non-GAAP financial measures presented may differ from similarly-titled measures used by other companies.

Adjusted EBITDA

We present Adjusted EBITDA, a non-GAAP financial measure, because we believe it enhances an investor's understanding of our financial and operational performance by excluding certain material non-cash items, unusual or non-recurring items that we do not expect to continue in the future, and certain other adjustments we believe are or are not reflective of our ongoing operations and performance. Adjusted EBITDA enables operating performance to be reviewed across reporting periods on a consistent basis. We use Adjusted EBITDA as one of the principal measures to evaluate and monitor our operating financial performance and to compare our performance to others in our industry. We also use Adjusted EBITDA in connection with establishing discretionary annual incentive

compensation targets, to make budgeting decisions, to make strategic decisions regarding the allocation of capital, and to report our quarterly results as defined in our debt agreements, although under such agreements the measure is calculated differently and is used for different purposes.

Adjusted EBITDA is not a substitute for net (loss) income, the most comparable GAAP measure, and is subject to a number of limitations as a financial measure, so it should be used in conjunction with GAAP financial measures and not in isolation. There can be no assurances that we will not modify the presentation of Adjusted EBITDA in the future. In addition, other companies in our industry may define Adjusted EBITDA differently, limiting its usefulness as a comparative measure. Refer to Part II, Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Reconciliation of Non-GAAP Financial Measures to GAAP Measures” included in the 2022 Form 10-K for more information regarding how we define Adjusted EBITDA.

The table below reflects the calculation of Adjusted EBITDA and Adjusted EBITDA Margin for the periods presented:

	(dollars in thousands)	<u>Thirteen weeks ended</u>		October 29, 2022	Thirty-nine weeks ended October 29, 2023
		October 28, 2023			October 29, 2023
Net (loss) income attributable to Class A and B-1 common stockholders	\$ (1,241,137)	\$ 19,920	\$ (1,257,635)	\$ 58,069	
Interest expense, net	35,418	27,177	108,172	68,474	
Income tax (benefit) expense	(22,902)	4,161	(17,178)	20,799	
Depreciation and amortization	50,674	48,029	148,593	143,599	
Income from equity method investees	(3,574)	(2,627)	(10,032)	(7,821)	
Loss on partial extinguishment of debt	174	—	920	—	
Goodwill impairment	1,222,524	—	1,222,524	—	
Asset impairments and write offs	1,167	930	2,202	2,299	
Equity-based compensation	18,183	15,775	64,431	40,892	
Other non-operating (income) loss	(113)	(576)	(4,727)	9,369	
Mexico joint venture EBITDA (1)	9,189	7,040	26,467	20,319	
Acquisition-related integration costs (2)	—	1,592	—	14,687	
Other costs (3)	2,556	(1,233)	12,026	2,194	
Adjusted EBITDA	<u>\$ 72,159</u>	<u>\$ 120,188</u>	<u>\$ 295,763</u>	<u>\$ 372,880</u>	
Net sales	<u>\$ 1,494,166</u>	<u>\$ 1,501,220</u>	<u>\$ 4,580,808</u>	<u>\$ 4,458,008</u>	
Net margin (4)	(83.1)%	1.3%	(27.5)%	1.3%	
Adjusted EBITDA Margin	4.8%	8.0%	6.5%	8.4%	

(1) Mexico joint venture EBITDA represents 50% of the entity's operating results for the periods presented, as adjusted to reflect the results on a basis comparable to our Adjusted EBITDA. In the financial statements, this joint venture is accounted for as an equity method investment and reported net of depreciation and income taxes. Because such a presentation would not reflect the adjustments made in our calculation of Adjusted EBITDA, we include our 50% interest in our Mexico joint venture on an Adjusted EBITDA basis to ensure consistency. The table below presents a reconciliation of Mexico joint venture net income to Mexico joint venture EBITDA:

	(dollars in thousands)	<u>Thirteen weeks ended</u>		October 29, 2022	Thirty-nine weeks ended October 29, 2023
		October 28, 2023			October 29, 2023
Net income	\$ 7,149	\$ 5,251	\$ 20,064	\$ 14,448	
Depreciation	6,920	4,861	19,071	13,866	
Income tax expense	2,470	2,957	8,908	8,344	
Foreign currency loss (gain)	441	(395)	963	(15)	
Interest expense, net	1,397	1,406	3,927	3,994	
EBITDA	<u>\$ 18,377</u>	<u>\$ 14,080</u>	<u>\$ 52,933</u>	<u>\$ 40,637</u>	
50% of EBITDA	<u>\$ 9,189</u>	<u>\$ 7,040</u>	<u>\$ 26,467</u>	<u>\$ 20,319</u>	

(2) Acquisition-related integration costs include direct costs resulting from acquiring and integrating businesses. These include third-party professional and legal fees and other integration-related costs that would not have otherwise been incurred as part of the company's operations. For the thirteen weeks ended October 29, 2022, approximately \$1.0 million of integration costs were recorded in cost of sales and \$0.6 million of integration costs were recorded in selling, general and administrative expenses relating to the purchase of the remaining stake in our veterinary joint venture. For the thirty-nine weeks ended October 29, 2022, approximately \$7.7 million of integration costs were recorded in cost of sales and \$7.0 million of integration costs were recorded in selling, general and administrative expenses relating to the purchase of the remaining stake in our veterinary joint venture.

(3) Other costs include, as incurred: restructuring costs and restructuring-related severance costs; legal reserves associated with significant, non-ordinary course legal or regulatory matters; and costs related to certain significant strategic transactions.

(4) We define net margin as net (loss) income attributable to Class A and B-1 common stockholders divided by net sales and Adjusted EBITDA margin as Adjusted EBITDA divided by net sales.

Free Cash Flow

Free Cash Flow is a non-GAAP financial measure that is calculated as net cash provided by operating activities less cash paid for fixed assets. Management believes that Free Cash Flow, which measures our ability to generate additional cash from our business operations, is an important financial measure for use in evaluating the Company's financial performance.

The table below reflects the calculation of Free Cash Flow for the periods presented:

		<u>Thirty-nine weeks ended</u>	
		<u>October</u>	<u>October</u>
		<u>28,</u>	<u>29,</u>
		<u>2023</u>	<u>2022</u>
	(dollars in thousands)		
Net cash provided by operating activities	\$	168,696	\$ 209,463
Cash paid for fixed assets		(176,532)	(212,074)
Free Cash Flow	\$	<u>(7,836)</u>	<u>\$ (2,611)</u>

Liquidity and Capital Resources

Overview

Our primary sources of liquidity are funds generated by operating activities and available capacity for borrowings on our \$500 million secured asset-based revolving credit facility maturing March 4, 2026 (the “ABL Revolving Credit Facility”). Our ability to fund our operations, to make planned capital investments, to make scheduled debt payments and to repay or refinance indebtedness depends on our future operating performance and cash flows, which are subject to prevailing economic conditions and financial, business, and other factors, some of which are beyond our control. Our liquidity as of October 28, 2023 was \$586.4 million, inclusive of cash and cash equivalents of \$139.8 million and \$446.6 million of availability on the ABL Revolving Credit Facility.

We are a party to contractual obligations involving commitments to make payments to third parties. These obligations impact our short-term and long-term liquidity and capital resource needs. We believe that our current resources, together with anticipated cash flows from operations and borrowing capacity under the ABL Revolving Credit Facility will be sufficient to finance our operations, meet our current cash requirements, and fund anticipated capital investments for at least the next 12 months. We may, however, seek additional financing to fund future growth or refinance our existing indebtedness through the debt capital markets, but we cannot be assured that such financing will be available on favorable terms, or at all.

Cash Flows

The following table summarizes our consolidated cash flows:

		<u>Thirty-nine weeks ended</u>	
		<u>October</u>	<u>October</u>
		<u>28,</u>	<u>29,</u>
		<u>2023</u>	<u>2022</u>
	(dollars in thousands)		
	Total cash provided by (used in):		
Operating activities	\$	168,696	\$ 209,463
Investing activities		(156,149)	(252,697)
Financing activities		(84,040)	(27,033)
Net decrease in cash, cash equivalents and restricted cash	\$	<u>(71,493)</u>	<u>\$ (70,267)</u>

Operating Activities

Our primary source of operating cash is sales of products and services to customers, which are substantially all on a cash basis, and therefore provide us with a significant source of liquidity. Our primary uses of cash in operating activities include: purchases of inventory; freight and warehousing costs; employee-related expenditures; occupancy-related costs for our pet care centers, distribution centers and corporate support centers; credit card fees; interest under our debt agreements; and marketing expenses. Net cash provided by operating activities is impacted by our net (loss) income adjusted for certain non-cash items, including: depreciation, amortization,

impairments and write-offs; amortization of debt discounts and issuance costs; deferred income taxes; equity-based compensation; impairments of goodwill and intangible assets; other non-operating (income) loss; and the effect of changes in operating assets and liabilities.

Net cash provided by operating activities was \$168.7 million in the thirty-nine weeks ended October 28, 2023 compared with net cash provided by operating activities of \$209.5 million in the thirty-nine weeks ended October 29, 2022. The decrease in operating cash flow was driven by lower earnings, an increase in cash paid for inventory,

higher payroll and fringe benefits as well as increases in cash paid for interest, income taxes and operating leases. This was partially offset by effective management of accounts payable and lower cash paid for advertising.

Investing Activities

Cash used in investing activities consists of capital expenditures, which in the thirty-nine weeks ended October 28, 2023 and the thirty-nine weeks ended October 29, 2022 primarily supported our initiatives including the continued build-out of our veterinary hospitals. Net cash used in investing activities was \$156.1 million and \$252.7 million for the thirty-nine weeks ended October 28, 2023 and October 29, 2022, respectively. This change was primarily driven by reductions in capital spend and proceeds received from the sale of our investment in Rover Group, Inc. during the thirty-nine weeks ended October 28, 2023. Additionally, during the thirty-nine weeks ended October 29, 2022, we paid \$35.0 million for the remaining 50% stake in our veterinary joint venture.

Financing Activities

Net cash used in financing activities was \$84.0 million for the thirty-nine weeks ended October 28, 2023, compared with \$27.0 million used in financing activities in the thirty-nine weeks ended October 29, 2022.

Financing cash flows in the thirty-nine weeks ended October 28, 2023 primarily consisted of \$75.0 million in principal repayments on the term loan.

Financing cash flows in the thirty-nine weeks ended October 29, 2022 primarily consisted of the scheduled quarterly repayments on the term loan and payments for tax withholdings on stock-based awards.

Sources of Liquidity

Senior Secured Credit Facilities

On March 4, 2021, the Company completed a refinancing transaction by entering into a \$1,700 million secured term loan facility maturing on March 4, 2028 (the "First Lien Term Loan") and the ABL Revolving Credit Facility, which matures on March 4, 2026 and has availability of up to \$500.0 million, subject to a borrowing base. Interest on the First Lien Term Loan is based on, at the Company's option, either a base rate or Adjusted Term SOFR, subject to a 0.75% floor, payable upon maturity of the SOFR contract, in either case plus the applicable rate. The base rate is the greater of the bank prime rate, federal funds effective rate plus 0.5% or Adjusted Term SOFR plus 1.0%. The applicable rate is 2.25% per annum for a base rate loan or 3.25% per annum for an Adjusted Term SOFR loan. Principal and interest payments commenced on June 30, 2021. Principal payments are typically \$4.25 million quarterly. In March 2023, May 2023 and August 2023, the Company repaid \$35.0 million, \$25.0 million and \$15.0 million in principal, respectively, of the First Lien Term Loan using existing cash on hand. The repayments were applied to remaining principal payments in order of scheduled payment date.

For more information regarding this indebtedness, refer to Note 4, "*Senior Secured Credit Facilities*," to the Notes to Consolidated Financial Statements included in Part I, Item 1 of this Form 10-Q.

Derivative Instruments

In November 2022, the Company entered into a series of interest rate cap agreements to limit the maximum interest on a portion of the Company's variable-rate debt and decrease its exposure to interest rate variability relating to three-month Term SOFR. The interest rate caps became effective December 30, 2022 and expire on December 31, 2024.

In March 2023, the Company entered into an interest rate collar agreement to limit the maximum interest on a portion of the Company's variable-rate debt and decrease its exposure to interest rate variability relating to three-month Term SOFR. The interest rate collar became effective March 31, 2023 and expires on March 31, 2026.

In June 2023, the Company entered into an interest rate collar agreement to limit the maximum interest on a portion of the Company's variable-rate debt and decrease its exposure to interest rate variability relating to

three-month Term SOFR. The interest rate collar became effective September 30, 2023 and expires on December 31, 2026.

For more information regarding derivative instruments, refer to Note 5, “*Derivative Instruments*,” to the Notes to Consolidated Financial Statements included in Part I, Item 1 of this Form 10-Q.

Critical Accounting Policies and Estimates

The preparation of our consolidated financial statements in conformity with accounting principles generally accepted in the United States (“GAAP”) requires us to make assumptions and estimates about future results and apply judgments that affect the reported amounts of assets, liabilities, net sales, expenses and related disclosures. We base our estimates and judgments on historical experience, current trends and other factors that we believe to be relevant at the time our consolidated financial statements are prepared. On an ongoing basis, we review the accounting policies, assumptions, estimates and judgments to ensure that our financial statements are presented fairly and in accordance with GAAP. However, because future events and their effects cannot be determined with certainty, actual results could differ from our assumptions and estimates, and such differences could be material.

Goodwill is not amortized but is tested annually for impairment during the fourth quarter of each fiscal year, or more frequently when warranted by events or changes in circumstances. The Company has the option to first perform a qualitative assessment of its goodwill to determine whether it is necessary to perform a quantitative impairment test. If the carrying value of net assets assigned to the reporting unit exceeds the fair value of the reporting unit, then we would record an impairment loss equal to the difference. In cases where the quantitative test is performed, the fair value of the Company's reporting unit is estimated by a third party valuation firm. If a quantitative assessment is performed, the evaluation includes management estimates of cash flow projections based on internal future projections and/or use of a market approach by reviewing transactional and financial data of publicly traded companies. The assumptions used in the impairment analysis are inherently subject to uncertainty and small changes in these assumptions could have a significant impact on the concluded value. The Company's market capitalization is also considered as part of the analysis, in order to further validate the reasonableness of the fair values concluded for the reporting unit. Factors that may trigger an interim impairment test may include, but are not limited to, current economic and market conditions or a significant decline in the Company's stock price and market capitalization compared to net book value.

The Company's trade name has an indefinite life and is tested annually for impairment during the fourth quarter of each fiscal year, or more frequently when warranted by events or changes in circumstances. The Company also has the option to first perform a qualitative assessment of its trade name to determine whether it is necessary to perform a quantitative impairment test. An impairment charge is recorded for the amount by which the carrying amount of the trade name exceeds its fair value. In cases where the quantitative test is performed, the fair value of the Company's trade name is estimated by a third party valuation firm. Factors that may trigger an interim impairment test may include, but are not limited to, a significant decline in the Company's stock price and market capitalization compared to net book value, or changes in the pattern of utilization of the intangible asset.

There have been no other material changes to our critical accounting policies and estimates as compared to the critical accounting policies and estimates described in the 2022 Form 10-K.

Recent Accounting Pronouncements

Refer to Note 1, “*Summary of Significant Accounting Policies*,” to the Notes to Consolidated Financial Statements included in Part I, Item 1 of this Form 10-Q for information regarding recently issued accounting pronouncements.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

We are subject to market risks arising from transactions in the normal course of our business. These risks are primarily associated with interest rate fluctuations, as well as changes in our credit standing, based on the capital and credit markets, which are not predictable. We do not currently hold any instruments for trading purposes.

Interest Rate Risk

We are subject to interest rate risk in connection with the First Lien Term Loan and the ABL Revolving Credit Facility. As of October 28, 2023, we had \$1,595.3 million outstanding under the First Lien Term Loan and no

amounts outstanding under the ABL Revolving Credit Facility. The First Lien Term Loan and the ABL Revolving Credit Facility each bear interest at variable rates. An increase of 100 basis points in the variable rates on the First Lien Term Loan and the ABL Revolving Credit Facility as of October 28, 2023 would have increased annual cash interest in the aggregate by approximately \$16.2 million. Additionally, we entered into cash flow hedges to limit the maximum interest rate on a portion of our variable-rate debt and limit our exposure to interest rate variability, refer to Note 4, “Derivative Instruments,” to the Notes to Consolidated Financial Statements included in Part I, Item 1 of this Form 10-Q.

We cannot predict market fluctuations in interest rates and their impact on our debt, nor can there be any assurance that long-term fixed-rate debt will be available at favorable rates, if at all. Consequently, future results may differ materially from estimated results due to adverse changes in interest rates or debt availability.

Credit Risk

As of October 28, 2023, our cash and cash equivalents were maintained at major financial institutions in the United States, and our current deposits are likely in excess of insured limits. We believe these institutions have sufficient assets and liquidity to conduct their operations in the ordinary course of business with little or no credit risk to us.

Foreign Currency Risk

Substantially all of our business is currently conducted in U.S. dollars. We do not believe that an immediate 10% increase or decrease in the relative value of the U.S. dollar as compared to other currencies would have a material effect on our operating results.

Item 4. Controls and Procedures.

Management’s Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in the reports that we file or submit under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required financial disclosure.

As of the end of the period covered by this Form 10-Q, our management, under the supervision and with the participation of our principal executive officer and principal financial officer, evaluated the effectiveness of our disclosure controls and procedures pursuant to Exchange Act Rules 13a-15(e) and 15d-15(e). Based upon this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective at a reasonable assurance level as of October 28, 2023.

Changes in Internal Control over Financial Reporting

There was no change in our internal control over financial reporting that occurred during the quarter ended October 28, 2023 which has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Limitations on the Effectiveness of Controls

Our disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives. Management does not expect, however, that our disclosure controls and procedures will prevent or detect all error and fraud. Any control system, no matter how well designed and operated, is based on certain assumptions and can provide only reasonable, not absolute, assurance that its objectives will be met. Further, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, within the Company have been detected.

PART II—OTHER INFORMATION

Item 1. Legal Proceedings.

See Note 8, “*Commitments and Contingencies*,” to the Notes to Consolidated Financial Statements included in Part I, Item 1 of this Form 10-Q for a description of legal proceedings, which is incorporated herein by reference.

Item 1A. Risk Factors.

Reference is made to Part I, Item 1A, “*Risk Factors*” included in the 2022 Form 10-K for information concerning risk factors. Except as set forth below, there have been no material changes with respect to the risk factors disclosed in the 2022 Form 10-K. The risk factor set forth below updates, and should be read together with, the risk factors in our 2022 Form 10-K. You should carefully consider such factors, which could materially and adversely affect our business, financial condition and/or results of operations. The risks described in this Form 10-Q and in the 2022 Form 10-K are not the only risks we face. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially and adversely affect our business, financial condition and/or results of operations.

General Risk Factors

Additional impairments of the carrying value of our goodwill or other intangible assets could adversely affect our financial condition and results of operations.

Our goodwill and other intangible assets represent a significant portion of our total assets. We test our goodwill and our indefinite-lived intangible assets for impairment at least annually and whenever events or changes in circumstances indicate that their carrying value may not be recoverable. A significant amount of judgment is involved in determining if an indication of impairment exists. Factors indicating impairment of goodwill or other intangible assets may include, among others: a significant decline in our expected future cash flows; a sustained, significant decline in our stock price and market capitalization; changes in the macroeconomic environment, increases in interest rates, a significant adverse change in legal factors or in the business climate; unanticipated or changing competition; and reduced growth rates. There are inherent uncertainties in management’s estimates, judgments, and assumptions used in the impairment evaluation process. To the extent that business conditions deteriorate or there are any material changes in key assumptions and estimates, it may be necessary to record additional impairment charges in the future which could have a material adverse effect on our financial condition and results of operations.

During the third quarter of fiscal 2023, we concluded indicators of impairment existed due to declines in the Company's share price, as well as current macroeconomic conditions, and performed an interim impairment test of our goodwill and indefinite-lived trade name, which resulted in a pre-tax goodwill impairment charge of \$1,222.5 million for the thirteen week period ended October 28, 2023 as discussed in Note 3, “*Goodwill*,” to the Notes to Consolidated Financial Statements included in Part I, Item 1 of this Form 10-Q. For further information on our evaluation of impairment of our goodwill and indefinite-lived trade name, please read the discussion under “Management’s Discussion and Analysis of Financial Condition and Results of Operations– Critical Accounting Policies and Estimates.”

Item 2. Unregistered Sales of Equity Securities, Use of Proceeds, and Issuer Purchases of Equity Securities.

None.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

None of our directors or Section 16 officers adopted or terminated a Rule 10b5-1 trading arrangement (as defined in Item 408(a) of Regulation S-K) or a non-Rule 10b5-1 trading arrangement (as defined in Item 408(c) of Regulation S-K) during the quarterly period covered by this Form 10-Q.

Item 6. Exhibits.

The following is a list of exhibits filed as part of this Form 10-Q:

**Exhibit
Number**

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

**Petco
Health
and
Wellne
Compa
Inc.**

Date:
December
7,
2023 By:

/s/
Brian
LaRose
Brian
LaRose
Chief
Financi
Officer
(Princip
Financi
and
Account
Officer

FIRST LIEN CREDIT AGREEMENT

dated as of March 4, 2021, as amended as of December 12, 2022

by and among

PETCO HEALTH AND WELLNESS COMPANY, INC.,

as Borrower

CITIBANK, N.A.,

as Administrative Agent and Collateral Agent,

and

THE LENDERS PARTY HERETO

CITIBANK, N.A.,

GOLDMAN SACHS BANK USA,

BOFA SECURITIES, INC.,

CREDIT SUISSE LOAN FUNDING LLC,

UBS SECURITIES LLC

and

WELLS FARGO SECURITIES, LLC

as Joint Lead Arrangers and Joint Bookrunners

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Limitation
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Liability

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- B-1 Term Loan Note
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FIRST LIEN CREDIT AGREEMENT

This FIRST LIEN CREDIT AGREEMENT is entered into as of March 4, 2021 (as amended by that certain First Amendment to Credit Agreement, dated as of December 12, 2022), by and among Petco Health and Wellness Company, Inc., a Delaware corporation (the “**Borrower**”), Citibank, N.A., as administrative agent under the Loan Documents (in such capacity, including any successor thereto, the “**Administrative Agent**”), Citibank, N.A., as collateral agent under the Loan Documents (in such capacity, including any successor thereto, the “**Collateral Agent**”), Citibank, N.A., Goldman Sachs Bank USA, BofA Securities, Inc., Credit Suisse Loan Funding LLC, UBS Securities LLC and Wells Fargo Securities, LLC, as joint lead arrangers and joint bookrunners (the “**Lead Arrangers**” and “**Joint Bookrunners**”), and each lender from time to time party hereto (collectively, the “**Lenders**” and, individually, a “**Lender**”). Capitalized terms used herein are defined as set forth in Section 1.01.

PRELIMINARY STATEMENTS

The Borrower has requested that upon satisfaction (or waiver) of the conditions precedent set forth in Article IV, the Lenders extend credit to the Borrower in the form of Initial Term Loans in an aggregate principal amount of \$1,700,000,000 pursuant to the terms of this Agreement.

On the Closing Date, the Borrower intends to enter into the ABL Credit Agreement pursuant to which it will obtain commitments in an aggregate principal amount of up to \$500,000,000.

The proceeds of the Initial Term Loans and proceeds from the issuance of other secured indebtedness concurrent therewith will be used on the Closing Date to (a) refinance certain outstanding debt of the Borrower and/or its subsidiaries, including Petco Animal Supplies, Inc., a Delaware corporation (“**Petco Animal Supplies**”) and its subsidiaries (the “**Existing Indebtedness**”), and (b) pay fees and expenses in connection with the Transactions.

On the Closing Date, the Borrower will repay (or cause to be repaid) the Existing Indebtedness under, terminate any commitments under, and cause to be released any contractual Liens securing obligations under the Existing Indebtedness Documents (such repayment, termination and release, collectively, the “**Closing Date Refinancing**”).

The applicable Lenders have indicated their willingness to make Loans on the terms and subject to the conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS

Section 1.01 Defined Terms. As used in this Agreement, the following terms have the meanings set forth below:

“**ABL Credit Agreement**” means that certain ABL Revolving Credit Agreement, dated as of the Closing Date, by and among the Borrower, the lenders party thereto, Citibank, N.A., as administrative agent and as collateral agent, and the other parties thereto, as the same may be amended, restated, modified, supplemented, extended, renewed, refunded, replaced or refinanced from time to time in one or more agreements (in each case with the same or new lenders, institutional investors or agents), including any agreement extending the maturity thereof or otherwise restructuring all or any portion of the Indebtedness thereunder or increasing the amount loaned or issued thereunder or altering the maturity thereof.

“**ABL Credit Facility**” means the senior secured asset-based revolving loan facility and any term loan facilities made pursuant to the ABL Credit Agreement.

“**ABL Loan Documents**” means the ABL Credit Agreement and the other “Loan Documents” as defined in the ABL Credit Agreement, as each such document may be amended, restated, supplemented and/or otherwise modified.

“**ABL Obligations**” means the “Obligations” as defined in the ABL Credit Agreement.

“**ABL Priority Collateral**” means the “ABL Collateral” as defined in the Closing Date ABL Intercreditor Agreement.

“**Acquisition Transaction**” means the purchase or other acquisition (in one transaction or a series of transactions, including by merger, amalgamation or otherwise) by the Borrower or any Restricted Subsidiary of all or substantially all the property, assets or business of another Person, or assets constituting a business unit, line of business or division of, any Person, or of a majority of the outstanding Equity Interests of any Person (including any Investment which serves to increase the Borrower’s or any Restricted Subsidiary’s respective equity ownership in any Joint Venture (other than an Unrestricted Subsidiary) or other Person to an amount in excess (or further in excess) of the majority of the outstanding Equity Interests of such Joint Venture or other Person).

“**Additional Lender**” means, at any time, any bank, other financial institution or institutional investor that, in any case, is not an existing Lender and that agrees to provide any portion of any,

(a) Incremental Loan in accordance with Section 2.13; or

(b) Credit Agreement Refinancing Indebtedness pursuant to a Refinancing Amendment in accordance with Section 2.14;

provided that each Additional Lender (other than any Person that is a Lender, an Affiliate or branch of a Lender or an Approved Fund of a Lender at such time) shall be subject to the approval of the Administrative Agent (such approval not to be unreasonably withheld, conditioned or delayed), in each case to the extent any such consent would be required from the Administrative Agent under Section 10.07(b)(iii)(B), for an assignment of Loans to such Additional Lender.

“**Adjusted Term SOFR**” means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment.

“**Administrative Agent**” has the meaning specified in the introductory paragraph to this Agreement.

“**Administrative Agent’s Office**” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

“**Administrative Questionnaire**” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“**Affected Financial Institution**” means (a) any EEA Financial Institution, or (b) any UK Financial Institution.

“**Affiliate**” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. As used in this definition, “**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise, and “**Controlled**” has the meaning correlative thereto. For the avoidance of doubt, none of the Lead Arrangers, the Agents, or their respective lending affiliates shall be deemed to be an Affiliate of the Loan Parties or any of the Restricted Subsidiaries.

“**Affiliated Debt Fund**” means,

(a) any Affiliate of a Sponsor that is a *bona fide* bank, debt fund, distressed asset fund, hedge fund, mutual fund, insurance company, financial institution or an investment vehicle that is engaged in the business of investing in, acquiring or trading commercial loans, bonds and similar extensions of credit in the ordinary course of business, in each case, that is not organized primarily for the purpose of making equity investments with respect to which the relevant Sponsor does not possess the power to make investment decisions for such entity and either,

(i) information barriers are in place restricting the sharing of information between it and such Sponsor, or

(ii) its managers have fiduciary duties to the investors in such fund that are independent of their fiduciary duties to investors in such Sponsor, and

(b) any investment fund or account of a Permitted Investor managed by third parties (including by way of a managed account, a fund or an index fund in which a Permitted Investor has invested) that is not organized or used primarily for the purpose of making equity investments.

“**Affiliated Lender**” means, at any time, any Lender that is either a Sponsor or an Affiliate of a Sponsor (including other Affiliates of the Borrower), at such time, excluding in any case, (a) the Borrower, (b) any Subsidiary of the Borrower and (c) any natural person.

“**Affiliated Lender Term Loan Cap**” has the meaning specified in Section 10.07(h)(iii).

“**Agent Parties**” has the meaning specified in Section 10.02(e).

“**Agent-Related Persons**” means the Agents, together with their respective Affiliates and branches, and the officers, directors, shareholders, employees, agents, attorney-in-fact, partners, trustees, advisors and other representatives of such Persons and of such Persons’ Affiliates and branches.

“**Agents**” means, collectively, the Administrative Agent, the Collateral Agent, the Supplemental Administrative Agents (if any), the Joint Bookrunners and the Lead Arrangers.

“**Aggregate Commitments**” means the Commitments of all the Lenders.

“**Agreement**” means this First Lien Credit Agreement, as amended, restated, amended and restated, modified or supplemented from time to time in accordance with the terms hereof.

“**Agreement Currency**” has the meaning specified in Section 2.17(b).

“**AHYDO Catch Up Payment**” has the meaning specified in Section 7.09(a)(viii).

“**All-In Yield**” means, as to any Indebtedness or Loans of any Class, the yield thereof, whether in the form of interest rate, margin, OID, upfront fees, Term Benchmark floor or Base Rate floor to the extent greater than the highest Term Benchmark floor or Base Rate floor applicable to the Loans (with such increased amount being equated to interest margins for purposes of determining any increase to the Applicable Rate); *provided* that (a) OID and upfront fees shall be equated to interest rate assuming a 4-year life to maturity (or, if less, the stated life to maturity at the time of its incurrence of the applicable Indebtedness) and (b) “All-In Yield” shall not include any arrangement fees, structuring fees, underwriting fees, commitment fees, amendment fees, ticking fees, prepayment fees or premiums, interest paid in kind, or any other fees similar to the foregoing (regardless of how such fees are computed or to whom paid).

“**Alternative Currencies**” means Euros and, in the case of any Incremental Facility or Refinancing Loans, any currency agreed to by the Administrative Agent, the Borrower and each Lender providing such Incremental Facility or Refinancing Loans (in its sole discretion); *provided* that, in each case, each such other currency is a lawful currency that is readily available, freely transferable and not restricted and able to be converted into Dollars in the London interbank deposit market.

“**Annual Financial Statements**” means the audited consolidated balance sheets of Petco Health and Wellness Company, Inc., a Delaware corporation, as of February 1, 2020, and the related consolidated statements of operations, changes in stockholders’ equity and cash flows for Petco Health and Wellness, Company, Inc. for the fiscal year then ended.

“**Applicable Creditor**” has the meaning specified in Section 2.17(b).

“**Applicable Decimal Place**” has the meaning specified in Section 1.04.

“**Applicable Indebtedness**” has the meaning specified in the definition of “Weighted Average Life to Maturity.”

“**Applicable Rate**” means,

(a) with respect to Initial Term Loans, a percentage *per annum* equal to (i) for Term Benchmark Loans, 3.25% and (ii) for Base Rate Loans, 2.25%; and

(b) with respect any Term Loans (other than Initial Term Loans) or other Incremental Loans, as specified in the applicable Incremental Amendment, Extension Amendment or Refinancing Amendment.

“**Appropriate Lender**” means, at any time, with respect to Loans of any Class, the Lenders of such Class.

“**Approved Fund**” means, with respect to any Lender, any Fund that is administered, advised or managed by (a) such Lender, (b) an Affiliate or branch of such Lender or (c) an entity or an Affiliate of an entity that administers, advises or manages such Lender.

“**Asset Sale Prepayment Percentage**” means,

(a) 100.00%, if the Borrower’s First Lien Net Leverage Ratio at the end of the immediately preceding fiscal year equals or exceeds the Closing Date First Lien Net Leverage Ratio *less* 0.50 to 1.00;

(b) 50.00%, if such First Lien Net Leverage Ratio is less than the Closing Date First Lien Net Leverage Ratio *less* 0.50 to 1.00, but equals or exceeds the Closing Date First Lien Net Leverage Ratio *less* 1.00 to 1.00; and

(c) 0.00%, if such First Lien Net Leverage Ratio is less than the Closing Date First Lien Net Leverage Ratio *less* 1.00 to 1.00,

in each case, calculated excluding the cash proceeds of any such Disposition or Casualty Event for purposes of netting (i.e., such cash proceeds shall not reduce the Borrower’s Consolidated Net Debt or Consolidated Secured Net Debt pursuant to **clause (b)** of the definition of such terms).

“**Assignment and Assumption**” means an Assignment and Assumption substantially in the form of Exhibit D-1 or any other form approved by the Administrative Agent.

“**Attorney Costs**” means all reasonable and documented in reasonable detail fees, expenses, charges and disbursements of any law firm or other external legal counsel.

“**Attributable Indebtedness**” means, on any date, in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

“**Available Amount**” means, as of any date of determination (such date, the “**Reference Date**”), with respect to the applicable Available Amount Reference Period, a cumulative amount equal to the sum of, without duplication:

(a) the greater of (A) 25.00% of Closing Date EBITDA and (B) 25.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination; *plus*

(b) an amount equal to 50.00% of cumulative Consolidated Net Income for such Available Amount Reference Period; ***provided*** that when measuring such amount (i) Consolidated Net Income will be deemed not to be less than zero in any fiscal year and (ii) Consolidated Net Income for any fiscal quarter or year will be deemed to be zero until the financial statements required to be delivered pursuant to **Section 6.01(a)** or **(b)** for such fiscal quarter, and the related Compliance Certificate required to be delivered pursuant to **Section 6.02(a)** for such fiscal quarter or year, have been received by the Administrative Agent; ***provided further*** that, with respect to any Restricted Payment or Junior Debt Repayment utilizing the Available Amount under this **clause (b)**, the Total Net Leverage Ratio (after giving Pro Forma Effect to the incurrence of such Restricted Payment or Junior Debt Repayment) for the most recently ended Test Period shall be less than or equal to the Closing Date Total Net Leverage Ratio; ***plus***

(c) Permitted Equity Issuances, during the period from and including the Business Day immediately following the Closing Date through and including the Reference Date and, to the extent Not Otherwise Applied; ***plus***

(d) to the extent not reflected as a return of capital with respect to such Investment for purposes of determining the amount of such Investment pursuant to **Section 7.02**, the aggregate amount of all cash dividends and other cash distributions received by the Borrower or any Restricted Subsidiary from any Minority Investments or Unrestricted Subsidiaries during the period from and including the Business Day immediately following the Closing Date through and including the Reference Date; ***plus***

(e) to the extent not reflected as a return of capital with respect to such Investment for purposes of determining the amount of such Investment pursuant to **Section 7.02**, the Investments of the Borrower and its Restricted Subsidiaries in any Unrestricted Subsidiary that has been re-designated as a Restricted Subsidiary or that has been merged, amalgamated or consolidated with or into the Borrower or any of its Restricted Subsidiaries (up to the lesser of (i) the fair market value of such Investments of the Borrower and its Restricted Subsidiaries in such Unrestricted Subsidiary at the time of such re-designation or merger, amalgamation or consolidation and (ii) the fair market value of such Investments by the Borrower and its Restricted Subsidiaries in such Unrestricted Subsidiary at the time they were made); ***plus***

(f) to the extent not reflected as a return of capital with respect to such Investment for purposes of determining the amount of such Investment or required to be applied to prepay Term Loans in accordance with **Section 2.04(b)(ii)**, the aggregate amount of all Net Cash Proceeds received by the Borrower or any Restricted Subsidiary in connection with the Disposition of its ownership interest in any Minority Investment or Unrestricted Subsidiary during the period from and including the Business Day immediately following the Closing Date through and including the Reference Date (up to the fair market value of the Investments made in such Minority Investment or Unrestricted Subsidiary at the time such Investments were made); ***plus***

(g) to the extent (i) not reflected as a return of capital with respect to such Investment for purposes of determining the amount of such Investment pursuant to **Section 7.02** and (ii) not in excess of the fair market value of such Investment at the time it was made, the returns (including repayments of principal and payments of interest), profits, distributions and similar amounts received in cash or Cash Equivalents by the Borrower and its Restricted Subsidiaries on

Investments made by the Borrower or any Restricted Subsidiary in reliance on the Available Amount; ***plus***

(h) (i) any amount of mandatory prepayments of Term Loans required to be prepaid pursuant to **Section 2.04(b)** that have been declined by Lenders and retained by the Borrower in accordance with **Section 2.04(b)(vi)** and (ii) any amount of mandatory prepayments of Pari Passu Lien Debt of the Borrower (and any Permitted Refinancing (as defined below) of the foregoing), to the extent such amount was required to be applied to offer to repurchase or otherwise prepay such Indebtedness and the holders of such Pari Passu Lien Debt declined such repurchase or prepayment; ***plus***

(i) any amount of Net Cash Proceeds from Dispositions or Casualty Events not required to be applied to a mandatory prepayment pursuant to **Section 2.04(b)(ii)** as a result of an Asset Sale Prepayment Percentage that is less than 100.00%; ***minus***

(j) the aggregate amount of any Investments made pursuant to **Section 7.02(hh)(i)**, any Restricted Payments made pursuant to **Section 7.06(o)(i)** and any Junior Debt Repayment made pursuant to **Section 7.09(a)(x)(A)** during the period commencing on the Closing Date and ending on the applicable date of determination (and, for purposes of this **clause (j)**, without taking account of the intended usage of the Available Amount on such applicable date of determination in the contemplated transaction).

Notwithstanding anything to the contrary, to the extent any Excess Cash Flow is not applied to make a prepayment pursuant to **Section 2.04(b)(i)** by virtue of the application of **Section 2.04(b)(v)**, such Excess Cash Flow shall not under any circumstances increase the Available Amount.

“**Available Amount Reference Period**” means, with respect to any applicable date of measurement of the Available Amount, the period commencing on (i) with respect to the calculation of **clause (b)** of the definition of “Available Amount”, the first day of the first full fiscal quarter in which the Closing Date occurs and ending on the last day of the most recent fiscal quarter for which internal financial statements are available and (ii) with respect to the calculation of “Available Amount” (other than **clause (b)** of the definition thereof) the day after the Closing Date through and including the date of measurement.

“**Available Tenor**” means, as of any date of determination and with respect to the then-current Benchmark for any currency, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an Interest Period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant Section 10.01(f)(iv).

“**Bail-In Action**” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“**Bail-In Legislation**” means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“**Bankruptcy Code**” shall mean Title 11 of the United States Code (11 U.S.C. §101, et seq.), as amended from time to time.

“**Base Rate**” means for any day a fluctuating rate *per annum* equal to the highest of (a) the Federal Funds Rate *plus* 0.50%, (b) the rate of interest in effect for such day as publicly announced from time to time by the Administrative Agent as its “prime rate”, and (c) the Adjusted Term SOFR for Loans denominated in Dollars on such day for an Interest Period of one month *plus* 1.00% (or, if such day is not a Business Day, the immediately preceding Business Day); *provided* that, notwithstanding the foregoing, the “**Base Rate**” shall in no event be less than 1.75% *per annum*. The “prime rate” is a rate set by the Administrative Agent based upon various factors including the Administrative Agent’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by the Administrative Agent shall take effect at the opening of business on the day specified in the public announcement of such change.

“**Base Rate Loan**” means a Loan denominated in Dollars that bears interest based on the Base Rate.

“**Base Rate SOFR Determination Day**” has the meaning specified in the definition of “Term SOFR”.

“**Benchmark**” means, initially with respect to any (i) amounts denominated in Dollars, Term SOFR Reference Rate; *provided* that if a Benchmark Transition has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 10.01(f)(i), (ii) amounts denominated in Euros, EURIBOR, *provided* that if Benchmark Transition Event has occurred with respect to EURIBOR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 10.01(f)(i), and (iii) amounts denominated in another Alternative Currency (other than Euros), the risk-free reference rate (**RFR**) applicable to such Alternative Currency as agreed to by the Administrative Agent, the Borrower and each Lender providing such Incremental Facility or Refinancing Loans (in its sole discretion).

“**Benchmark Replacement**” means, with respect to any Benchmark Transition Event for any then-current Benchmark, the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for such Benchmark giving due

consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for such Benchmark for syndicated credit facilities denominated in Dollars or any Non-Hardwired Currencies, as applicable, at such time and (b) the related Benchmark Replacement Adjustment; provided that, if such Benchmark Replacement as determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for syndicated credit facilities denominated in Dollars or an Alternative Currency at such time.

“Benchmark Replacement Conforming Changes” means, with respect to either the use or administration of an initial Benchmark or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 3.05 and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark for any currency:

- (a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

- (b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Transition Event**” means, with respect to the then-current Benchmark, the occurrence of one or more of the following events with respect to such Benchmark:

- (a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);
- (b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, the central bank for an Alternative Currency applicable to such Benchmark, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or
- (c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Transition Start Date**” means, with respect to any Benchmark, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

“**Benchmark Unavailability Period**” means, with respect to any then-current Benchmark for any currency, the period (if any) (x) beginning at the time that a Benchmark Replacement Date with respect to such Benchmark has occurred if, at such time, no Benchmark Replacement has replaced such Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 10.01(f) and (y) ending at the time that a Benchmark Replacement has replaced the such Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 10.01(f).

“**Beneficial Ownership Certification**” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

“**Beneficial Ownership Regulation**” means 31 C.F.R. § 1010.230.

“**Benefit Plan**” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“**BHC Act Affiliate**” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“**Board of Directors**” means, as to any Person, the board of directors, board of managers or other governing body of such Person, or if such Person is owned or managed by a single entity, the board of directors, board of managers or other governing body of such entity, and the term “directors” means members of the Board of Directors.

“**Borrower**” has the meaning specified in the introductory paragraph to this Agreement.

“**Borrower Materials**” has the meaning specified in [Section 6.02](#).

“**Borrowing**” means a borrowing consisting of Loans of the same Class and Type made, converted or continued on the same date and, in the case of Term Benchmark Loans, having the same Interest Period.

“**Borrowing Base**” means as of any date, an amount equal to (A) the sum of (i) 90% of eligible credit card account receivables, 90% of the net orderly liquidation value of eligible inventory and (iii) 100% of qualified cash, in each case, of the Borrower and its Restricted Subsidiaries, *minus* (B) the amount of all reserves then in effect.

“**Business Day**” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the jurisdiction where the Administrative Agent’s Office is located (which, as of the date of this Agreement, is New York, New York) and

(i) if such day relates to any interest rate settings as to a Term Benchmark Loan denominated in Dollars, any fundings, disbursements, settlements and payments in respect of any such Term Benchmark Loan, or any other dealings to be carried out pursuant to this Agreement in respect of any Term Benchmark Loan, means any such day that is also a U.S. Government Securities Business Day and

(ii) if such day relates to any interest rate settings as to a Term Benchmark Loan denominated in Euros, any fundings, disbursements, settlements and payments in respect of any such Term Benchmark Loan, or any other dealings to be carried out pursuant to this Agreement in respect of any such Term Benchmark Loan, means any such day that is also a TARGET Day.

“**Capital Expenditures**” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Capitalized Leases) by the Borrower and the Restricted Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as capital expenditures on the consolidated statement of cash flows of the Borrower and the Restricted Subsidiaries; *provided* that Capital Expenditures will not include:

(a) expenditures to the extent they are made with proceeds of the issuance of Equity Interests of, or a cash capital contribution to, the Borrower after the Closing Date;

(b) expenditures with proceeds of insurance settlements, condemnation awards and other settlements in respect of lost, destroyed, damaged or condemned assets, equipment or other property to the extent such expenditures are made to replace or repair such lost, destroyed, damaged or condemned assets, equipment or other property or otherwise to acquire, maintain, develop, construct, improve, upgrade or repair assets or properties useful in the business of the Borrower and its Subsidiaries;

(c) interest capitalized during such period;

(d) expenditures that are accounted for as capital expenditures of such Person and that actually are paid for by a third party (excluding the Borrower and any Restricted Subsidiary) and for which none of the Borrower or any Restricted Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such third party or any other Person (whether before, during or after such period) (it being understood that notwithstanding the foregoing, landlord financed improvements to leased real properties shall be excluded from “Capital Expenditures” pursuant to this **clause (d)**);

(e) the book value of any asset owned by the Borrower or any Restricted Subsidiary prior to or during such period to the extent that such book value is included as a Capital Expenditure during such period as a result of such Person reusing or beginning to reuse such asset during such period without a corresponding expenditure actually having been made in such period;

provided that any expenditure necessary in order to permit such asset to be reused will be included as a Capital Expenditure during the period that such expenditure is actually made;

(f) the purchase price of equipment purchased during such period to the extent the consideration therefor consists of any combination of (i) used or surplus equipment traded in at the time of such purchase or (ii) the proceeds of a concurrent sale of used or surplus equipment, in each case, in the ordinary course of business;

(g) Investments in respect of a Permitted Acquisition;

(h) the purchase of property, plant or equipment to the extent purchased with the proceeds of Dispositions that are not applied to prepay Term Loans pursuant to **Section 2.04(b)**; or

(i) expenditures used for acquisitions of fee-owned real property, up to the greater of (A) 5.00% of Closing Date EBITDA and (B) 5.00% of TTM Consolidated Adjusted EBITDA on a Pro Forma Basis as of the applicable date of determination during any fiscal year, so long as (i) the Borrower demonstrates to the satisfaction of the Administrative Agent a viable plan that provides for a Sale Leaseback Transaction within one year of acquisition and (ii) the Administrative Agent approves of the exclusion of such expenditures in their reasonable discretion, *provided* if the Borrower and its Subsidiaries fail to complete such Sale Leaseback Transaction within such one-year period, expenditures used for such acquisition shall be included as Capital Expenditures in the fiscal year in which such one-year period expires.

“**Capitalized Lease Obligation**” means, at the time any determination thereof is to be made, the amount of the liability in respect of a Capitalized Lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP.

“**Capitalized Leases**” means all financing leases that have been or are required to be, in accordance with GAAP as in effect on the Closing Date (including the Borrower’s adoption of Accounting Standards Update (ASU) No. 2016-02, Leases (Topic 842)), recorded as financing leases; *provided* that (i) for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP as in effect on the Closing Date (including the Borrower’s adoption of Accounting Standards Update (ASU) No. 2016-02, Leases (Topic 842)) and (ii) in no event shall an operating lease or a lease that would have been an operating lease prior to the adoption of Accounting Standards Update (ASU) No. 2016-02, Leases (Topic 842) be considered a Capitalized Lease.

“**Captive Insurance Subsidiary**” means any Subsidiary of the Borrower that is subject to regulation as an insurance company (or any Subsidiary thereof).

“**Cash Collateral Account**” means an account held at, and subject to the sole dominion and control of, the Collateral Agent.

“**Cash Collateralize**” means, in respect of an Obligation, to provide and pledge (as a first priority perfected security interest) cash collateral in Dollars, at a location and pursuant to documentation in form and substance satisfactory to the Administrative Agent (and “**Cash**

Collateralization” has a corresponding meaning). **“Cash Collateral”** shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” means any of the following types of Investments (including for the avoidance of doubt, cash), to the extent owned by the Borrower or any Restricted Subsidiary:

- (a) Dollars and each Alternative Currency;
- (b) local currencies held by the Borrower or any Restricted Subsidiary from time to time in the ordinary course of business and not for speculation;
- (c) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed or insured by the United States government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 12 months or less from the date of acquisition;
- (d) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, demand deposits, bankers’ acceptances with maturities not exceeding one year and overnight bank deposits, in each case with any domestic or foreign commercial bank having capital and surplus of not less than \$500,000,000 (or the foreign currency equivalent thereof as of the date of such investment);
- (e) repurchase obligations for underlying securities of the types described in **clauses (c) and (d)** above or **clause (h)** below entered into with any financial institution meeting the qualifications specified in **clause (d)** above;
- (f) commercial paper rated at least P-2 by Moody’s or at least A-2 by S&P (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency) and in each case maturing within 12 months after the date of creation thereof;
- (g) marketable short-term money market and similar highly liquid funds having a rating of at least P-2 or A-2 from Moody’s or S&P, respectively (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency);
- (h) readily marketable direct obligations issued by any state, commonwealth or territory of the United States, or any political subdivision or taxing authority thereof, in each case having an Investment Grade Rating from either Moody’s or S&P (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency) with maturities of 12 months or less from the date of acquisition;
- (i) Investments with average maturities of 12 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody’s (or, if at any time neither Moody’s nor S&P shall be

rating such obligations, an equivalent rating from another nationally recognized statistical rating agency);

(j) investment funds investing substantially all of their assets in securities of the types described in **clauses (a)** through **(i)** above; and

(k) solely with respect to any Captive Insurance Subsidiary, any investment that a Captive Insurance Subsidiary is not prohibited to make in accordance with applicable Law.

In the case of Investments by any Foreign Subsidiary that is a Restricted Subsidiary or Investments made in a jurisdiction outside the United States of America, Cash Equivalents shall also include (i) investments of the type and maturity described in **clauses (a)** through **(k)** above in foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in **clauses (a)** through **(k)** above and in this paragraph. Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in **clause (a)** or **(b)** above; *provided* that such amounts, except amounts used to pay obligations of the Borrower or any Restricted Subsidiary denominated in any currency other than Dollars or an Alternative Currency in the ordinary course of business, are converted into Dollars or an Alternative Currency as promptly as practicable and in any event within ten Business Days following the receipt of such amounts.

“Cash Management Bank” means,

(i) any Person that is a Lender or Agent or an Affiliate or branch of a Lender or Agent (a) on the Closing Date (with respect to any Cash Management Services entered into prior to the Closing Date), (b) at the time it initially provides any Cash Management Services to the Borrower or any Restricted Subsidiary, or (c) at the time that the Person to whom the Cash Management Services are provided is merged or amalgamated with the Borrower or becomes or is merged or amalgamated with a Restricted Subsidiary (with respect to any Cash Management Services entered into prior to the date of such merger or amalgamation or such Person becoming a Restricted Subsidiary), in each case whether or not such Person subsequently ceases to be a Lender or Agent or an Affiliate or branch of a Lender or Agent or

(ii) any other Person designated by the Borrower to the Administrative Agent in writing and so long as such Person (a) agrees to appoint the Administrative Agent as its agent under the applicable Loan Documents and (b) agrees to be bound by the provisions of the applicable Loan Documents as a Cash Management Bank.

“Cash Management Obligations” means obligations owed by the Borrower or any Restricted Subsidiary to any Cash Management Bank in respect of or in connection with any Cash Management Services and designated by the Cash Management Bank and the Borrower in writing to the Administrative Agent as **“Cash Management Obligations”** (but only if such Cash Management Services have not been designated as **“Cash Management Obligations”** under the ABL Credit Agreement).

“**Cash Management Services**” means any agreement or arrangement to provide cash management services, including treasury, depository, overdraft, credit card processing, credit or debit card, purchase card, electronic funds transfer and other cash management arrangements.

“**Casualty Event**” means any event that gives rise to the receipt by a Loan Party of any property or casualty insurance proceeds or any condemnation or expropriation awards, in each case, in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

“**CFC**” means a “controlled foreign corporation” within the meaning of Section 957(a) of the Code.

“**Change in Law**” means the occurrence, after the date of this Agreement, of any of the following:

- (a) the adoption or taking effect of any law, rule, regulation or treaty (excluding the taking effect after the date of this Agreement of a law, rule, regulation or treaty adopted prior to the date of this Agreement);
- (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority; or
- (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

It is understood and agreed that (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, H.R. 4173), all Laws relating thereto, all interpretations and applications thereof and any compliance by a Lender with any and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof or relating thereto and (ii) all requests, rules, guidelines, requirements or directives issued by any United States or foreign regulatory authority in connection with the implementation of the recommendations of the Bank for International Settlements or the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) in each case pursuant to Basel III, shall, for the purposes of this Agreement, be deemed to be adopted subsequent to the date hereof and a Change in Law regardless of the date enacted, adopted, issued, promulgated or implemented. Notwithstanding the foregoing, FATCA (as defined below) shall not be considered a “Change in Law.”

“**Change of Control**” means the earliest to occur of:

- (a) any Person (other than a Permitted Holder) or Persons (other than one or more Permitted Holders) constituting a “group” (as such term is used in Section 13(d) and Section 14(d) of the Exchange Act, but excluding any employee benefit plan of such Person and its Subsidiaries, and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), becoming the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under such Act), directly or indirectly, of Equity Interests representing more than forty percent (40.00%) of the aggregate ordinary voting power represented by the then issued and outstanding Equity Interests of the Borrower (or Successor Borrower, if applicable) and the percentage of aggregate

ordinary voting power so held is greater than the percentage of the aggregate ordinary voting power represented by the Equity Interests of the Borrower (or Successor Borrower, if applicable) beneficially owned (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, in the aggregate by the Permitted Holders, unless the Permitted Holders have, at such time, the right or the ability by voting power, contract or otherwise to elect or designate for election 50.00% or more of the Board of Directors of the Borrower (or Successor Borrower, if applicable); and

(b) a Change of Control or similar event occurring under the ABL Credit Agreement.

“**Class**” when used in reference to,

(a) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Initial Term Loans, Incremental Term Loans, Refinancing Term Loans, or Extended Term Loans;

(b) any Commitment, refers to whether such Commitment is (i) a Commitment in respect of Initial Term Loans, (ii) a Refinancing Term Commitment (and, in the case of a Refinancing Term Commitment, the Class of Loans to which such commitment relates), or (iii) a Commitment in respect of a Class of Loans to be made pursuant to an Incremental Amendment or an Extension Amendment; and

(c) any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class of Loans or Commitments.

Refinancing Term Commitments, Refinancing Term Loans, Incremental Term Loans and Extended Term Loans that have different terms and conditions shall be construed to be in different Classes.

“**Closing Date**” means the first date on which all of the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01 and the Initial Term Loans are made to the Borrower pursuant to the first sentence of Section 2.01(a).

“**Closing Date ABL Intercreditor Agreement**” means that certain Intercreditor Agreement, dated as of the Closing Date, by and among the Collateral Agent, each Debt Representative under the ABL Credit Agreement, and each additional representative from time to time party thereto, as acknowledged by the Loan Parties, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

“**Closing Date EBITDA**” means \$543,000,000.

“**Closing Date First Lien Net Leverage Ratio**” means 3.00 to 1.00.

“**Closing Date Refinancing**” has the meaning specified in the preliminary statements to this Agreement.

“**Closing Date Secured Net Leverage Ratio**” means 3.00 to 1.00.

“**Closing Date Total Net Leverage Ratio**” means 3.00 to 1.00.

“**Closing Fee**” has the meaning specified in Section 2.08(b).

“**Co-Borrower**” has the meaning specified in Section 1.10.

“**Co-Borrower Effective Date**” has the meaning specified in Section 1.10.

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended from time to time.

“**Collateral**” means all the “**Collateral**” (or equivalent term, including “hypothecated property”) as defined in any Collateral Document and all other property that is subject or purported to be subject to any Lien in favor of the Collateral Agent for the benefit of the Secured Parties pursuant to any Collateral Document, but in any event excluding all Excluded Assets.

“**Collateral Agent**” has the meaning specified in the introductory paragraph to this Agreement.

“**Collateral Documents**” means, collectively, the Security Agreement, the Intellectual Property Security Agreements, the Security Agreement Supplements, security agreements, or other similar agreements delivered to the Agents and the Lenders pursuant to Sections 4.01(a), 6.11, 6.12 or 6.15, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties.

“**Commitments**” means the Term Loan Commitments.

“**Committed Loan Notice**” means a notice of a Borrowing pursuant to Article II, which, if in writing, shall be substantially in the form of Exhibit A-1 or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent)

“**Commodity Exchange Act**” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“**Company Person**” means any future, current or former officer, director, manager, member, member of management, employee, consultant or independent contractor of the Borrower or any Subsidiary.

“**Compliance Certificate**” means a certificate substantially in the form of Exhibit C.

“**Connection Income Taxes**” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“**Consolidated Adjusted EBITDA**” means, with respect to any Person for any Test Period, the Consolidated Net Income of such Person for such Test Period:

(a) increased, without duplication, by the following items (solely to the extent deducted (and not excluded) in calculating Consolidated Net Income, other than in respect of the proviso in **clause (i)** below and **clauses (ii)(B), (xi), (xix)** and **(xx)** below) of such Person and its Restricted Subsidiaries for such Test Period determined on a consolidated basis in accordance with GAAP:

(i) interest expense, including

(A) imputed interest on Capitalized Lease Obligations and Attributable Indebtedness (which, in each case, will be deemed to accrue at the interest rate reasonably determined by a Responsible Officer of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligations or Attributable Indebtedness),

(B) commissions, discounts and other fees, charges and expenses owed with respect to letters of credit, bankers' acceptance financing, surety and performance bonds and receivables financings,

(C) amortization and write-offs of deferred financing fees, debt issuance costs, debt discounts, commissions, fees, premium and other expenses, as well as expensing of bridge, commitment or financing fees,

(D) payments made in respect of hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk,

(E) cash contributions to any employee stock ownership plan or similar trust to the extent such contributions are used by such plan or trust to pay interest or fees to any Person (other than such Person or a wholly-owned Restricted Subsidiary) in connection with Indebtedness incurred by such plan or trust,

(F) all interest paid or payable with respect to discontinued operations,

(G) the interest portion of any deferred payment obligations, and

(H) all interest on any Indebtedness that is

(x) Indebtedness of others secured by any Lien on property owned or acquired by such Person or its Restricted Subsidiaries, whether or not the obligations secured thereby have been assumed, but limited to the fair market value of such property,

(y) contingent obligations in respect of Indebtedness; *provided* that such interest expense shall be calculated after giving effect to Hedge Agreements related to interest rates (including associated costs), but excluding unrealized gains and losses with respect to such Hedge Agreements or

(z) fee and expenses paid to the Administrative Agent (in its capacity as such and for its own account) pursuant to the Loan Documents and fees and expenses paid to the administrative agent, the collateral agent, trustee or other similar Persons for any other Indebtedness permitted by **Section 7.03**;

provided further that, when determining such interest expense in respect of any Test Period ending prior to the first anniversary of the Closing Date, such interest expense will be calculated by multiplying the aggregate amount of such interest expense accrued since the Closing Date by 365 and then dividing such product by the number of days from and including the Closing Date to and including the last day of such Test Period; ***plus***

(ii) taxes based on gross receipts, income, profits or revenue or capital, franchise, excise, property, commercial activity, sales, use, unitary or similar taxes, and foreign withholding taxes, including penalties and interest; ***plus***

(iii) depreciation expense and amortization expense (including amortization and similar charges related to goodwill, customer relationships, trade names, databases, technology, software, internal labor costs, deferred financing fees or costs and other intangible assets); ***plus***

(iv) non-cash items (***provided*** that if any such non-cash item represents an accrual or reserve for potential cash items in any future period,

(x) the Borrower may determine not to add back such non-cash item in the current Test Period,

(y) to the extent the Borrower decides to add back such non-cash expense or charge, the cash payment in respect thereof in such future period will be subtracted from Consolidated Adjusted EBITDA in such future period), including the following:

(A) non-cash expenses in connection with, or resulting from, stock option plans, employee benefit plans or agreements or post-employment benefit plans or agreements, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other similar rights,

(B) non-cash currency translation losses related to changes in currency exchange rates (including re-measurements of Indebtedness (including intercompany Indebtedness) and any net non-cash loss resulting from hedge agreements for currency exchange risk),

(C) non-cash losses, expenses, charges or negative adjustments attributable to the movement in the mark-to-market valuation of hedge agreements or other derivative instruments, including the effect of FASB Accounting Standards Codification 815 and International Accounting

Standard No. 9 and their respective related pronouncements and interpretations,

(D) non-cash charges for deferred tax asset valuation allowances,

(E) any non-cash impairment charge or asset write-off or write-down related to intangible assets (including goodwill), long-lived assets, and Investments in debt and equity securities,

(F) any non-cash charges or losses resulting from any purchase accounting adjustment or any step-ups with respect to re-valuing assets and liabilities in connection with the Transactions or any Investments either existing or arising after the Closing Date,

(G) all non-cash losses from Investments either existing or arising after the Closing Date recorded using the equity method and

(H) the excess of GAAP rent expense over actual cash rent paid during such period due to the use of straight line rent for GAAP purposes and

(z) any non-cash interest expense; *plus*

(v) unusual, extraordinary, infrequent or non-recurring items, whether or not classified as such under GAAP; *plus*

(vi) charges, costs, losses, expenses or reserves related to:

(A) restructuring (including restructuring charges or reserves, whether or not classified as such under GAAP), severance, relocation, consolidation, integration or other similar items,

(B) strategic and/or business initiatives, business optimization (including costs and expenses relating to business optimization programs, which, for the avoidance of doubt, shall include, without limitation, implementation of operational and reporting systems and technology initiatives; strategic initiatives; retention; severance; systems establishment costs; systems conversion and integration costs; contract termination costs; recruiting and relocation costs and expenses; costs, expenses and charges incurred in connection with curtailments or modifications to pension and post-retirement employee benefits plans; costs to start-up, pre-opening, opening, closure, transition and/or consolidation of distribution centers, operations, offices, stores, pet care centers and other facilities) including in connection with any Permitted Investment, any acquisition or other investment consummated prior to or after the Closing Date and new systems design and implementation, as well as consulting fees and any one-time expense relating to enhanced accounting function,

- (C) business or facilities (including greenfield facilities) start-up, opening, transition, consolidation, shut-down and closing,
 - (D) signing, retention and completion bonuses,
 - (E) severance, relocation or recruiting,
 - (F) public company registration, listing, compliance, reporting and related expenses,
 - (G) charges and expenses incurred in connection with litigation (including threatened litigation), any investigation or proceeding (or any threatened investigation or proceeding) by a regulatory, governmental or law enforcement body (including any attorney general), and
 - (H) expenses incurred in connection with casualty events or asset sales outside the ordinary course of business; ***plus***
- (vii) all
 - (A) costs, fees and expenses relating to the Transactions,
 - (B) costs, fees and expenses (including diligence and integration costs) incurred in connection with
 - (x) investments in any Person, acquisitions of the Equity Interests of any Person, acquisitions of all or a material portion of the assets of any Person or constituting a line of business of any Person, and financings related to any of the foregoing or to the capitalization of any Loan Party or any Restricted Subsidiary or
 - (y) other transactions that are out of the ordinary course of business of such Person and its Restricted Subsidiaries
- (in each case of **clause (x)** and **(y)**, including transactions considered or proposed but not consummated), including Permitted Equity Issuances, Investments, acquisitions, dispositions, recapitalizations, mergers, amalgamations, option buyouts and the incurrence, modification or repayment of Indebtedness (including all consent fees, premium and other amounts payable in connection therewith) and
- (C) non-operating professional fees, costs and expenses; ***plus***
- (viii) items reducing Consolidated Net Income to the extent
 - (A) covered by a binding indemnification or refunding obligation or insurance to the extent actually paid or reasonably expected to be paid,

(B) paid or payable (directly or indirectly) by a third party that is not a Loan Party or a Restricted Subsidiary (except to the extent such payment gives rise to reimbursement obligations) or with the proceeds of a contribution to equity capital of such Person by a third party that is not a Loan Party or a Restricted Subsidiary or

(C) such Person is, directly or indirectly, reimbursed for such item by a third party; **plus**

(ix) the amount of management, monitoring, consulting, transaction and advisory fees (including termination fees) and related indemnities and expenses paid, payable or accrued in such Test Period (including any termination fees payable in connection with the early termination of management and monitoring agreements); **plus**

(x) the effects of purchase accounting, fair value accounting or recapitalization accounting (including the effects of adjustments pushed down to such Person and its Subsidiaries) and the amortization, write-down or write-off of any such amount; **plus**

(xi) proceeds of business interruption insurance actually received (to the extent not counted in any prior period in anticipation of such receipt) or, to the extent not counted in any prior period, reasonably expected to be received; **plus**

(xii) minority interest expense consisting of income attributable to Equity Interests held by third parties in any non-wholly-owned Restricted Subsidiary; **plus**

(xiii) all charges, costs, expenses, accruals or reserves in connection with the rollover, acceleration or payout of Equity Interests held by officers or employees and all losses, charges and expenses related to payments made to holders of options or other derivative Equity Interests of such Person or any direct or indirect parent thereof in connection with, or as a result of, any distribution being made to equity holders of such Person or any direct or indirect parent thereof, including (A) payments made to compensate such holders as though they were equity holders at the time of, and entitled to share in, such distribution, and (B) all dividend equivalent rights owed pursuant to any compensation or equity arrangement; **plus**

(xiv) expenses, charges and losses resulting from the payment or accrual of indemnification or refunding provisions, earn-outs and contingent consideration obligations; bonuses and other compensation paid to employees, directors or consultants; and payments in respect of dissenting shares and purchase price adjustments; in each case, made in connection with a Permitted Investment or other transactions disclosed in the documents referred to in **clause (xix)** below; **plus**

(xv) any losses from abandoned, closed, disposed or discontinued operations or operations that are anticipated to become abandoned, closed, disposed or discontinued; **plus**

(xvi) (A) any costs or expenses (including any payroll taxes) incurred by the Borrower or any Restricted Subsidiary in such Test Period as a result of, in connection with

or pursuant to any management equity plan, profits interest or stock option plan or any other management or employee benefit plan or agreement, any pension plan (including (1) any post-employment benefit scheme to which the relevant pension trustee has agreed, (2) as a result of curtailments or modifications to pension and post-retirement employee benefit plans and (3) without limitation, compensation arrangements with holders of unvested options entered into in connection with a permitted Restricted Payment), any stock subscription, stockholders or partnership agreement, any payments in the nature of compensation or expense reimbursement made to independent board members, any employee benefit trust, any employee benefit scheme or any similar equity plan or agreement (including any deferred compensation arrangement), including any payment made to option holders in connection with, or as a result of, any distribution being made to, or share repurchase from, a shareholder, which payments are being made to compensate option holders as though they were shareholders at the time of, and entitled to share in, such distribution or share repurchase and

(B) any costs or expenses incurred in connection with the rollover, acceleration or payout of Equity Interests held by management of the Borrower (and/or any Restricted Subsidiary); **plus**

(xvii) the amount of loss or discount on sale of receivables, Securitization Assets and related assets to any Securitization Subsidiary in connection with a Qualified Securitization Financing; **plus**

(xviii) the cumulative effect of a change in accounting principles; **plus**

(xix) addbacks of the type reflected in (A) the lender presentation used in connection with the syndication of the Facility or (B) any quality of earnings report prepared by a nationally recognized accounting firm and furnished to the Administrative Agent, in connection with any Permitted Investment or other Investment consummated after the Closing Date; **plus**

(xx) at the Borrower's option, in each case, the amount of "run rate" cost savings, operating expense reductions and other cost synergies that are projected by the Borrower in good faith to result from actions taken, committed to be taken or expected to be taken no later than 24 months after the end of such Test Period (which amounts will be determined by the Borrower in good faith and calculated on a pro forma basis as though such amounts had been realized on the first day of the Test Period for which Consolidated Adjusted EBITDA is being determined), net of the amount of actual benefits realized during such Test Period from such actions; ***provided*** that, in the good faith judgment of the Borrower such cost savings are reasonably identifiable, reasonably anticipated to be realized and factually supportable (it being agreed such determinations need not be made in compliance with Regulation S-X or other applicable securities law); **plus**

(xxi) to the extent not included in Consolidated Net Income for such period, cash actually received (or any netting arrangement resulting in reduced cash expenditures) during such period so long as the non-cash gain relating to the relevant cash receipt or

netting arrangement was deducted in the calculation of Consolidated Adjusted EBITDA for any previous period and not added back; **plus**

(xxii) all costs and expenses in connection with pre-opening and opening of stores, distribution centers and other facilities that were not already excluded in calculating such Consolidated Net Income; **plus**

(xxiii) the amount of any contingent payments in connection with the licensing of intellectual property or other assets; **plus**

(xxiv) [reserved]; **plus**

(xxv) [reserved]; **plus**

(xxvi) any net pension or other post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, including amortization or such amounts arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) existing at the date of initial application of FASB Accounting Standards Codification 715, and any other items of a similar nature; **plus**

(xxvii) payments made pursuant to Earnouts and Unfunded Holdbacks; and

(b) decreased, without duplication, by the following items of such Person and its Restricted Subsidiaries for such Test Period determined on a consolidated basis in accordance with GAAP (solely to the extent increasing Consolidated Net Income):

(i) any amount which, in the determination of Consolidated Net Income for such period, has been included for any non-cash income or non-cash gain, all as determined in accordance with GAAP (***provided*** that if any non-cash income or non-cash gain represents an accrual or deferred income in respect of potential cash items in any future period, such Person may determine not to deduct the relevant non-cash gain or income in the then-current period); **plus**

(ii) the amount of any cash payment made during such period in respect of any non-cash accrual, reserve or other non-cash charge that is accounted for in a prior period and that was added to Consolidated Net Income to determine Consolidated Adjusted EBITDA for such prior period and that does not otherwise reduce Consolidated Net Income for the current period; **plus**

(iii) the excess of actual cash rent paid over rent expense during such period due to the use of straight-line rent for GAAP purposes; **plus**

(iv) the amount of any income or gain associated with any Restricted Subsidiary that is attributable to any non-controlling interest and/or minority interest of any third party; **plus**

(v) any net income from disposed or discontinued operations; **plus**

- (vi) any unusual, extraordinary, infrequent or non-recurring gains.

“**Consolidated Current Assets**” means, as of any date of determination, the total assets of the Borrower and the Restricted Subsidiaries on a consolidated basis that may properly be classified as current assets in conformity with GAAP, excluding cash and Cash Equivalents, amounts related to current or deferred taxes based on income or profits, assets held for sale, loans (permitted) to third parties, pension assets, deferred bank fees and derivative financial instruments, and excluding the effects of adjustments pursuant to GAAP resulting from the application of recapitalization accounting or purchase accounting, as the case may be, in relation to the Transactions or any consummated acquisition.

“**Consolidated Current Liabilities**” means, as at any date of determination, the total liabilities of the Borrower and the Restricted Subsidiaries on a consolidated basis that may properly be classified as current liabilities in conformity with GAAP, excluding

- (a) the current portion of any Funded Debt,
- (b) the current portion of interest,
- (c) accruals for current or deferred taxes based on income or profits,
- (d) accruals of any costs or expenses related to restructuring reserves,
- (e) any revolving facility,
- (f) the current portion of any Capitalized Lease Obligation,
- (g) deferred revenue arising from cash receipts that are earmarked for specific projects,
- (h) liabilities in respect of unpaid earn-outs and
- (i) the current portion of any other long-term liabilities, and, furthermore, excluding the effects of adjustments pursuant to GAAP resulting from the application of recapitalization accounting or purchase accounting, as the case may be, in relation to the Transaction or any consummated acquisition.

“**Consolidated Interest Expense**” means, for any Test Period, the sum of:

- (a) cash interest expense (including that attributable to Capitalized Leases), net of cash interest income, of the Borrower and the Restricted Subsidiaries with respect to all outstanding Indebtedness of the Borrower and the Restricted Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net costs under hedging agreements, plus
- (b) non-cash interest expense resulting solely from the amortization of original issue discount from the issuance of Indebtedness of the Borrower and the Restricted Subsidiaries (excluding Indebtedness borrowed under this Agreement and the ABL Credit Agreement in connection with and to finance the Transactions) at less than par, plus

(c) pay-in-kind interest expense of the Borrower and the Restricted Subsidiaries payable pursuant to the terms of the agreements governing such debt for borrowed money;

but excluding, for the avoidance of doubt,

(i) amortization of deferred financing costs, debt issuance costs, commissions, fees and expenses and any other amounts of non-cash interest other than referred to in **clause (b)** above (including as a result of the effects of acquisition method accounting or pushdown accounting),

(ii) non-cash interest expense attributable to the movement of the mark-to-market valuation of obligations under hedging agreements or other derivative instruments pursuant to FASB Accounting Standards Codification No. 815-Derivatives and Hedging,

(iii) any one-time cash costs associated with breakage in respect of hedging agreements for interest rates,

(iv) commissions, discounts, yield, make whole premium and other fees and charges (including any interest expense) incurred in connection with any receivables financing (including any Qualified Securitization Financing),

(v) any “additional interest” owing pursuant to a registration rights agreement with respect to any securities,

(vi) any payments with respect to make-whole premiums or other breakage costs of any Indebtedness, including any Indebtedness issued in connection with the Transactions,

(vii) penalties and interest relating to taxes,

(viii) accretion or accrual of discounted liabilities not constituting Indebtedness,

(ix) [reserved],

(x) any expense resulting from the discounting of Indebtedness in connection with the application of recapitalization or purchase accounting and

(xi) any interest expense attributable to the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto and with respect to any Acquisition Transaction or other Investment, all as calculated on a consolidated basis in accordance with GAAP.

For the avoidance of doubt, interest expense shall be determined after giving effect to any net payments made or received by the Borrower and its Restricted Subsidiaries in respect of Swap Contracts relating to interest rate protection.

“**Consolidated Net Debt**” means, as of any date of determination, (a) Consolidated Total Debt *minus* (b) the aggregate amount of cash and Cash Equivalents of the Borrower and the Restricted Subsidiaries as of such date that is not Restricted.

“**Consolidated Net Income**” means, with respect to any Person for any Test Period, the Net Income of such Person and its Restricted Subsidiaries determined on a consolidated basis in accordance with GAAP; *provided* that there shall be excluded from such consolidated net income (to the extent otherwise included therein), without duplication:

(a) the Net Income for such Test Period of any Person that is not a Subsidiary, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting; *provided* that (i) the Borrower’s or any Restricted Subsidiary’s equity in the Net Income of such Person shall be included in the Consolidated Net Income of the Borrower for such Test Period up to the aggregate amount of dividends or distributions or other payments in respect of such equity that are actually distributed or could have been distributed, in each case, in cash (or to the extent converted into cash), by such Person to the Borrower or a Restricted Subsidiary, in each case, in such Test Period, to the extent not already included therein (subject in the case of dividends, distributions or other payments in respect of such equity made to a Restricted Subsidiary to the limitations contained in **clause (b)** below) and (ii) without duplication, the Borrower’s or any Restricted Subsidiary’s equity in the Net Income of such Person that is a Joint Venture shall be included in the Consolidated Net Income of the Borrower for such Test Period up to the ownership percentage of the Borrower or any Restricted Subsidiary in such Joint Venture;

(b) solely with respect to the calculation of Available Amount and Excess Cash Flow, the Net Income of any Restricted Subsidiary of such Person, any Person that is not a Subsidiary, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, during such Test Period to the extent that the declaration or payment of dividends or similar distributions by such Restricted Subsidiary of that income is not permitted by operation of the terms of its Organization Documents or any agreement, instrument or requirement of Law applicable to such Person during such Test Period; *provided* that Consolidated Net Income of such Person shall be increased, to the extent constituting internally generated funds of such distributing entity, by the amount of dividends or distributions or other payments that are actually paid in cash to such Person or its Restricted Subsidiaries in respect of such Test Period;

(c) any gain (or loss), together with any related provisions for taxes on any such gain (or the tax effect of any such loss), realized by such Person or any of its Restricted Subsidiaries during such Test Period upon any asset sale or other disposition of any Equity Interests of any Person (other than any dispositions in the ordinary course of business) by such Person or any of its Restricted Subsidiaries;

(d) gains and losses due solely to fluctuations in currency values and the related tax effects determined in accordance with GAAP for such Test Period;

(e) earnings (or losses), including any impairment charge, resulting from any reappraisal, revaluation or write-up (or write-down) of assets during such Test Period;

(f) (i) unrealized gains and losses with respect to Hedge Agreements for such Test Period and the application of Accounting Standards Codification 815 (Derivatives and Hedging), (ii) unrealized gains and losses resulting from mark-to-market adjustments for Investments in marketable securities for such Test Period and (iii) any after-tax effect of income (or losses) for such Test Period that result from the early extinguishment of (A) Indebtedness, (B) obligations under any Hedge Agreements or (C) other derivative instruments;

(g) any extraordinary, infrequent, non-recurring or unusual gain (or extraordinary, infrequent, non-recurring or unusual loss), together with any related provision for taxes on any such gain (or the tax effect of any such loss), recorded or recognized by such Person or any of its Restricted Subsidiaries during such Test Period;

(h) the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such Test Period;

(i) after-tax gains (or losses) on disposal of disposed, abandoned or discontinued operations for such Test Period;

(j) effects of adjustments (including the effects of such adjustments pushed down to such Person and its Restricted Subsidiaries) in the inventory, property and equipment, software, goodwill, other intangible assets, in-process research and development, deferred revenue, debt and unfavorable or favorable lease line items in such Person's consolidated financial statements pursuant to GAAP for such Test Period resulting from the application of purchase accounting in relation to the Transactions or any acquisition consummated prior to the Closing Date and any Permitted Acquisition or other Investment or the amortization or write-off of any amounts thereof, net of taxes, for such Test Period;

(k) any non-cash compensation charge or expense for such Test Period, including any such charge or expense arising from the grants of stock appreciation or similar rights, stock options, restricted stock or other rights and any cash charges or expenses associated with the rollover, acceleration or payout of Equity Interests by, or to, management of such Person or any of its Restricted Subsidiaries in connection with the Transactions;

(l) (i) Transaction Expenses incurred during such Test Period and (ii) any fees and expenses incurred during such Test Period, or any amortization thereof for such Test Period, in connection with any acquisition, Investment, disposition, issuance or repayment of Indebtedness, issuance of Equity Interests (including the Borrower's initial public offering and any follow-on offering of its Equity Interests), refinancing transaction or amendment or modification of any debt or equity instrument (in each case, including any such transaction whether consummated on, after or prior to the Closing Date and any such transaction undertaken but not completed) and any charges or non-recurring costs incurred during such Test Period as a result of any such transaction;

(m) any expenses, charges or losses for such Test Period that are covered by indemnification or other reimbursement provisions in connection with any Investment, Permitted Acquisition or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement, to the extent actually reimbursed, or, so long as the Borrower has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such

amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 days); and

(n) to the extent covered by insurance and actually reimbursed, or, so long as the Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed within 365 days of the date of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so reimbursed within such 365 days), expenses, charges or losses for such Test Period with respect to liability or casualty events or business interruption.

“**Consolidated Secured Net Debt**” means, as of any date of determination, Consolidated Net Debt that is secured by a Lien on the Collateral outstanding as of such date, other than Capitalized Lease Obligations.

“**Consolidated Total Debt**” means, as of any date of determination, the aggregate principal amount of third party Indebtedness of the Borrower and the Restricted Subsidiaries outstanding on such date, determined on a consolidated basis and as reflected on the face of a balance sheet prepared in accordance with GAAP (but excluding the effects of the application of purchase accounting in connection with the Transactions, any Permitted Acquisition or any other Investment permitted hereunder), consisting of Indebtedness for borrowed money, unreimbursed obligations in respect of drawn letters of credit (to the extent not cash collateralized), and obligations in respect of Capitalized Leases and purchase money obligations and debt obligations evidenced by promissory notes or debentures; *provided* that Consolidated Total Debt will not include Indebtedness in respect of

- (a) any Qualified Securitization Financing,
- (b) any letter of credit, except to the extent of unreimbursed obligations in respect of drawn letters of credit (*provided* that any unreimbursed amount under commercial letters of credit will not be counted as Consolidated Total Debt until three Business Days after such amount is drawn (it being understood that any borrowing, whether automatic or otherwise, to fund such reimbursement will be counted)),
- (c) obligations under Hedge Agreements,
- (d) obligations in respect of cash management obligations,
- (e) purchase money obligations incurred in the ordinary course, trade payable and earn outs and similar obligations,
- (f) Indebtedness to the extent it has been cash collateralized, and
- (g) any lease obligations other than in respect of Capitalized Leases.

“**Consolidated Working Capital**” means, as of any date of determination, the excess of Consolidated Current Assets over Consolidated Current Liabilities.

“**Contract Consideration**” has the meaning specified in the definition of “Excess Cash Flow.”

“**Contractual Obligation**” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“**Contribution Indebtedness**” means Indebtedness in an aggregate principal amount at the time of the incurrence thereof not to exceed an amount equal to 100.00% of the amount of any Permitted Equity Issuances during the period from and including the Business Day immediately following the Closing Date through and including the reference date that are Not Otherwise Applied.

“**Control**” has the meaning specified in the definition of “Affiliate.”

“**Conversion/Continuation Notice**” means a notice of (a) a conversion of Loans from one Type to another or (b) a continuation of Term Benchmark Loans, pursuant to Article II, which, if in writing, shall be substantially in the form of Exhibit A-2.

“**Corresponding Tenor**” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding Business Day adjustment) as such Available Tenor.

“**Covered Entity**” means any of the following:

- (a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“**Covered Party**” has the meaning specified in Section 10.26(b).

“**Credit Agreement Refinancing Indebtedness**” means Indebtedness of the Borrower or any Restricted Subsidiary in the form of term loans or notes or revolving commitments; *provided* that:

- (a) such Indebtedness is incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace, or refinance, in whole or part, Indebtedness that is either Term Loans or other Credit Agreement Refinancing Indebtedness (together, “**Refinanced Debt**”);
- (b) such Indebtedness is in an original aggregate principal amount not greater than the principal amount of the Refinanced Debt being exchanged, extended, renewed, replaced or refinanced (plus (i) the amount of all unpaid, accrued, or capitalized interest, penalties, premiums

(including tender premiums) and other amounts payable with respect to the Refinanced Debt and (ii) underwriting discounts, fees, commissions, costs, expenses and other amounts payable with respect to such Credit Agreement Refinancing Indebtedness);

(c) except for Indebtedness incurred pursuant to the Inside Maturity Exception, (i) the Weighted Average Life to Maturity of such Indebtedness is equal to or longer than the remaining Weighted Average Life to Maturity of the Refinanced Debt, and (ii) the final maturity date of such Credit Agreement Refinancing Indebtedness may not be earlier than the final maturity date of the Refinanced Debt;

(d) any mandatory prepayments (and with respect to any Credit Agreement Refinancing Indebtedness comprising revolving loans, to the extent commitments thereunder are permanently terminated) of,

(i) any Credit Agreement Refinancing Indebtedness that comprises notes or term loans that are either secured by Liens that are junior in priority to Liens securing Term Loans or are not secured by Liens on any Collateral may not be made, except to the extent that prepayments are (A) permitted hereunder and (B) to the extent required hereunder, first made or offered to the Loans on a pro rata basis; and

(ii) any Credit Agreement Refinancing Indebtedness that is Pari Passu Lien Debt shall be made on a pro rata basis or less than *pro rata* basis with any corresponding mandatory prepayment required hereunder of the Term Loans (but not greater than a *pro rata* basis); ***provided*** this **clause (ii)** will not prohibit any repayment of such Credit Agreement Refinancing Indebtedness at maturity or with the proceeds of other Credit Agreement Refinancing Indebtedness;

(e) such Indebtedness is not guaranteed by any Subsidiary other than a Subsidiary Guarantor (including any Subsidiary that becomes a Subsidiary Guarantor in connection therewith); and

(f) if such Indebtedness is secured:

(i) such Indebtedness is not secured by a Lien on any assets or property of a Loan Party that does not constitute Collateral (except (1) customary cash collateral in favor of an agent, letter of credit issuer or similar “fronting” lender, (2) Liens on property or assets applicable only to periods after the Latest Maturity Date of the Term Loans at the time of incurrence, (3) any Liens on property or assets to the extent that a Lien on such property or asset is also added for the benefit of the Lenders under the Term Loans and (4) Excluded Assets);

(ii) to the extent the Credit Agreement Refinancing Indebtedness is required to be subject to the provisions of the Closing Date ABL Intercreditor Agreement, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to, or is otherwise subject to the provisions of the Closing Date ABL Intercreditor Agreement or any other intercreditor agreement that may be executed from time to time and reasonably acceptable to the Administrative Agent;

(iii) a Debt Representative acting on behalf of the holders of such Indebtedness has become party to, or is otherwise subject to the provisions of, (A) if such Indebtedness is Pari Passu Lien Debt, an Equal Priority Intercreditor Agreement or (B) if such Indebtedness is Junior Lien Debt, a Junior Lien Intercreditor Agreement.

Credit Agreement Refinancing Indebtedness will be deemed to include any Registered Equivalent Notes issued in exchange therefor.

“**CVC**” means any funds or limited partnerships managed or advised by CVC Advisors (U.S.) Inc., CVC Capital Partners SICAV-FIS S.A. or any of their respective Affiliates or direct or indirect Subsidiaries or any investors in such funds as of the Closing Date or limited partnerships excluding, in each case, any portfolio companies in which such funds or limited partnerships hold an investment other than those through which such funds or limited partnership hold their investment in the Borrower and excluding, in each case, any funds or entities managed or advised by CVC Credit Partners Group Holding Foundation (or any of its direct or indirect Subsidiaries engaged in the same or a similar business to CVC Credit Partners Group Holding Foundation) who are investors in such funds or limited partnerships as of the Closing Date, investing directly or indirectly in the Borrower.

“**Daily Simple SOFR**” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

“**Debt Representative**” means, with respect to any series of Indebtedness secured by a Lien that is subject to an Intercreditor Agreement, or is subordinated in right of payment to all or any part of the Obligations, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“**Debtor Relief Laws**” means the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, arrangement, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally, including any applicable corporations legislation to the extent the relief sought under such corporations legislation relates to or involves the compromise, settlement, adjustment or arrangement of debt.

“**Default**” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“**Default Rate**” means an interest rate equal to (a) the Base Rate *plus* (b) the Applicable Rate applicable to Base Rate Loans *plus* (c) 2.00% per annum; *provided* that with respect to the outstanding principal amount of any Loan not paid when due, the Default Rate shall be an interest

rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan (giving effect to Section 2.02(c)) *plus* 2.00% per annum, in each case, to the fullest extent permitted by applicable Laws.

“**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“**Defaulting Lender**” means, subject to Section 2.16(b), any Lender that,

(a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (which conditions precedent, together with the applicable default, if any, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due;

(b) has notified the Borrower, the Administrative Agent or any Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with the applicable default, if any, shall be specifically identified in such writing or public statement) cannot be satisfied);

(c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder; *provided* that such Lender shall cease to be a Defaulting Lender pursuant to this **clause (c)** upon receipt of such written confirmation by the Administrative Agent and the Borrower; or

(d) the Administrative Agent or the Borrower has received notification that such Lender is, or has a direct or indirect parent entity that is,

(i) insolvent, or is generally unable to pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of its creditors,

(ii) other than via an Undisclosed Administration, the subject of a bankruptcy, insolvency, reorganization, liquidation or similar proceeding, or a receiver, trustee, conservator, intervenor or sequestrator, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other Federal or state regulatory authority acting in such a capacity or the like has been appointed for such Lender or its direct or indirect parent entity, or such Lender or its direct or indirect parent entity has taken any action in furtherance of or indicating its consent to or acquiescence in any such proceeding or appointment or

(iii) become the subject of a Bail-In Action;

provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent entity thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

Any determination by the Administrative Agent or the Borrower that a Lender is a Defaulting Lender under **clauses (a)** through **(d)** above shall be conclusive absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to **Section 2.16**) upon delivery of written notice of such determination to the Borrower, the Administrative Agent and each Lender.

“Deliverable Obligation” means each obligation of the Loan Parties that would constitute a **“Deliverable Obligation”** under a market standard credit default swap transaction documented under the ISDA CDS Definitions and specifying any of the Loan Parties as a Reference Entity. Each capitalized term used but not defined in the preceding sentence has the meaning specified in the ISDA CDS Definitions, as applicable.

“Derivative Instrument” means with respect to a Person, any contract or instrument to which such Person is a party (whether or not requiring further performance by such Person), the value and/or cash flows of which (or any portion thereof) are based on the value and/or performance of the Loans and/or any Deliverable Obligations or **“Obligations”** (as defined in the ISDA CDS Definitions) with respect to the Loan Parties; *provided* that a **“Derivative Instrument”** will not include any contract or instrument that is entered into pursuant to bona fide market-making activities.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory is the subject of any Sanctions.

“Designated Non-Cash Consideration” means the fair market value of any non-cash consideration received by the Borrower or a Restricted Subsidiary in connection with a Disposition pursuant to the General Asset Sale Basket that is designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer (which amount will be reduced by the fair market value of the portion of the non-cash consideration converted to cash within one hundred eighty days following the consummation of the applicable Disposition).

“Disposition” or **“Dispose”** means the sale, transfer, license, lease or other disposition (excluding Liens and any sale of Equity Interests in, or issuance of Equity Interests by, a Restricted Subsidiary, but including, for the avoidance of doubt, any Division) of any property by any Person.

“Disqualified Equity Interests” means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition,

(a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale, as long as any rights of the holders thereof upon the occurrence of a change

of control or asset sale event is subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments);

(b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part;

(c) provides for the scheduled payments of dividends that are required to be made only in cash; or

(d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests;

in each case, prior to the Latest Maturity Date of the Loans at the time of issuance; *provided* that if such Equity Interests are issued pursuant to a plan for the benefit of one or more Company Persons or by any such plan to one or more Company Persons, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by the Borrower or the Restricted Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of a Company Person's termination, death or disability.

“**Disqualified Lender**” means,

(a) the competitors of the Borrower and its Subsidiaries identified in writing by or on behalf of the Borrower (i) to the Lead Arrangers on or prior to the Closing Date, or (ii) to the Administrative Agent, from time to time on or after the Closing Date;

(b) (i) any Persons that are engaged as principals primarily in private equity or venture capital (other than a *bona fide* debt fund affiliate of any of the Lead Arrangers) and (ii) those particular banks, financial institutions, other institutional lenders and other Persons, in the case of each of **clauses (i)** and **(ii)**, to the extent identified in writing by or on behalf of the Borrower to the Lead Arrangers on or prior to the Closing Date; and

(c) any Affiliate of a Person described in the preceding **clauses (a)** or **(b)** that (in each case with respect to **clause (a)** above, other than any Affiliates that are banks, financial institutions, bona fide debt funds or investment vehicles that are engaged in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course), in each case, is either reasonably identifiable as such on the basis of its name or is identified as such in writing by or on behalf of the Borrower (i) to the Lead Arrangers on or prior to the Closing Date, or (ii) to the Administrative Agent from time to time on or after the Closing Date.

The Borrower may, in its discretion, make the list of Disqualified Lenders available to any Lender, Participant, or any prospective Lender or Participant, upon request by such Lender, Participant or prospective Lender or Participant, as applicable. The Borrower shall, upon request of any Lender, identify whether any Person identified by such Lender as a proposed assignee or Participant is a Disqualified Lender. To the extent Persons are identified as Disqualified Lenders after the Closing Date pursuant to **clauses (a)** or **(c)** above, the inclusion of such Persons as Disqualified Lenders shall not retroactively apply to prior assignments or participations made in compliance with **Section 10.07** hereof. Notwithstanding the foregoing, if the list of Disqualified Lenders has not

been made available to such Lender and, after such Lender’s written request, the Borrower refuses to identify (or declines to identify after two Business Days) whether such proposed assignee or participant is on the list of Disqualified Lenders, then the list of Disqualified Lenders shall not apply to such assignment or participation to be entered into at such time; *provided* that in no event will the Borrower be required to identify to any Lender whether such proposed assignee or participant is on the list of Disqualified Lenders more than once (the “**Disqualified Lender Provisions**”).

“**Division**” has the meaning specified in Section 1.02(d).

“**Dollar**” and “**\$**” mean lawful money of the United States.

“**Dollar Amount**” means, at any time:

(a) with respect to any Loan denominated in Dollars, the principal amount thereof then outstanding (or in which such participation is held); and

(b) with respect to any other amount (i) if denominated in Dollars, the amount thereof, or (ii) if denominated in any currency other than Dollars, the equivalent amount thereof in Dollars as determined by the Administrative Agent on the basis of the Exchange Rate (determined in respect of the most recent relevant date of determination) for the purchase of Dollars with such currency.

“**Domestic Subsidiary**” means any Subsidiary that is organized under the Laws of the United States, any state thereof or the District of Columbia.

“**Earnouts**” means (a) all earnout payments or other contingent payments in connection with any Permitted Investment and (b) Existing Earnouts and Unfunded Holdbacks.

“**ECF Prepayment Percentage**” means,

(a) 50.00%, if the Borrower’s First Lien Net Leverage Ratio at the end of the immediately preceding fiscal year equals or exceeds the Closing Date First Lien Net Leverage Ratio less 0.25 to 1.00;

(b) 25.00%, if such First Lien Net Leverage Ratio is less than the Closing Date First Lien Net Leverage Ratio less 0.25 to 1.00, but equals or exceeds the Closing Date First Lien Net Leverage Ratio less 0.50 to 1.00; and

(c) 0.00%, if such First Lien Net Leverage Ratio is less than the Closing Date First Lien Net Leverage Ratio less 0.50 to 1.00.

“**EEA Financial Institution**” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“**EEA Member Country**” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“**EEA Resolution Authority**” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“**Eligible Assignee**” means any Person that meets the requirements to be an assignee under **Section 10.07(b)(v)**; *provided* that the following Persons shall not be Eligible Assignees: (a) any Defaulting Lender, (b) any Person that is Disqualified Lender and (c) unless approved by the Borrower in its sole discretion (for the avoidance of doubt, without giving effect to the proviso set forth in **Section 10.07(b)(iii)(A)**, if applicable), any prospective Lender or Participant that would be a Net Short Lender immediately after giving effect to the assignment or participation pursuant to which such prospective Lender or Participant would become an actual Lender or Participant, as applicable.

“**Environmental Claim**” means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations by any Governmental Authority, or proceedings with respect to any Environmental Liability or pursuant to Environmental Law, including those (a) by any Governmental Authority for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any Environmental Law and (b) by any Person seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief pursuant to any Environmental Law.

“**Environmental Laws**” means any and all Laws relating to the protection of the environment or, to the extent relating to exposure to Hazardous Materials, human health.

“**Environmental Liability**” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Loan Party or any of the Restricted Subsidiaries, directly or indirectly, resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“**Environmental Permit**” means any permit, approval, identification number, license or other authorization required under or issued pursuant to any Environmental Law.

“**Equal Priority Intercreditor Agreement**” means an intercreditor agreement, substantially in the form attached hereto as Exhibit M (as the same may be modified in a manner satisfactory to the Administrative Agent, the Collateral Agent and the Borrower), or, if requested by the providers of Indebtedness permitted hereunder to be Pari Passu Lien Debt, another pari passu intercreditor arrangement reasonably satisfactory to the Administrative Agent, the Collateral Agent and the Borrower, in each case as amended, restated, amended and restated, modified or supplemented from time to time in accordance with the terms hereof and thereof. Upon the request of the Borrower, the Administrative Agent and the Collateral Agent will execute and deliver an

Equal Priority Intercreditor Agreement with one or more Debt Representatives for Pari Passu Lien Debt permitted hereunder.

“**Equity Interests**” means, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in, including any limited or general partnership interest and any limited liability company membership interest) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (but excluding any debt convertible into Equity Interests).

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) that together with any Loan Party is treated as a single employer within the meaning of Section 414 of the Code or Section 4001 of ERISA. For the avoidance of doubt, when any provision of this Agreement relates to a past event or period of time, the term “**ERISA Affiliate**” includes any Person who was, as to the time of such past event or period of time, an ERISA Affiliate within the meaning of the preceding sentence.

“**ERISA Event**” means

- (a) a Reportable Event with respect to a Pension Plan;
- (b) a withdrawal by any Loan Party or any of their respective ERISA Affiliates from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA;
- (c) a complete or partial withdrawal by any Loan Party or any of their respective ERISA Affiliates from a Multiemployer Plan, written notification of any Loan Party or any of their respective ERISA Affiliates concerning the imposition of Withdrawal Liability or written notification that a Multiemployer Plan is insolvent within the meaning of Title IV of ERISA;
- (d) the filing under Section 4041(c) of ERISA of a notice of intent to terminate a Pension Plan, the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan;
- (e) the imposition of any liability under Title IV of ERISA, other than for the payment of plan contributions or PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any of their respective ERISA Affiliates;
- (f) the failure to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA) with respect to any Pension Plan;
- (g) the application for a minimum funding waiver under Section 302(c) of ERISA with respect to a Pension Plan;

- (h) the imposition of a lien under Section 303(k) of ERISA with respect to any Pension Plan or
- (i) a determination that any Pension Plan is in “at risk” status (within the meaning of Section 303 of ERISA).

“**EU Bail-In Legislation Schedule**” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“**EURIBOR**” has the meaning specified in clause (b) if the definition of Term Benchmark.

“**EURIBOR Rate**” has the meaning specified in clause (b) of the definition of Term Benchmark.

“**Event of Default**” has the meaning specified in **Section 8.01**.

“**Excess Cash Flow**” means, for any period, an amount equal to the excess of:

(a) the sum, without duplication, of:

(i) Consolidated Net Income of the Borrower and the Restricted Subsidiaries for such period, ***plus***

(ii) an amount equal to the amount of all non-cash charges (including depreciation and amortization) for such period to the extent deducted in arriving at such Consolidated Net Income, but excluding any such non-cash charges representing an accrual or reserve for potential cash items in any future period and excluding amortization of a prepaid cash item that was paid in a prior period, ***plus***

(iii) decreases in Consolidated Working Capital for such period (other than any such decreases arising from acquisitions or Dispositions by the Borrower and the Restricted Subsidiaries completed during such period, the application of purchase accounting or the reclassification of items from short term to long term or vice versa), ***plus***

(iv) an amount equal to the aggregate net non-cash loss on Dispositions by the Borrower and the Restricted Subsidiaries during such period (other than Dispositions in the ordinary course of business) to the extent deducted in arriving at such Consolidated Net Income, ***plus***

(v) the amount deducted as tax expense in determining Consolidated Net Income to the extent in excess of cash taxes paid in such period, ***plus***

(vi) cash receipts in respect of Hedge Agreements during such period to the extent not otherwise included in such Consolidated Net Income; ***over***

(b) the sum, without duplication, of:

(i) an amount equal to the amount of all non-cash credits included in arriving at such Consolidated Net Income (but excluding any non-cash credit to the extent representing the reversal of an accrual or reserve described in clause (a)(ii) above) and cash charges excluded by virtue of clauses (a) through (l) (other than clause (g) of the definition of “**Consolidated Net Income**”), plus

(ii) without duplication of amounts deducted pursuant to clause (b)(xi) below or this clause (b)(ii) in prior periods, and any amounts deducted pursuant to Section 2.04(b)(i)(B), the amount of Capital Expenditures or acquisitions of intellectual property accrued or made in cash during such period to the extent not financed with the proceeds of Funded Debt, plus

(iii) the aggregate amount of all principal payments of Indebtedness (including the principal component of payments in respect of Capitalized Leases) of the Borrower and the Restricted Subsidiaries to the extent such prepayments or repayments are not funded with the proceeds of Funded Debt, excluding

(A) all payments of Indebtedness described in Section 2.04(b)(i)(B)(I)-(V) to the extent such payments reduce the repayment of Term Loans that would otherwise be required by Section 2.04(b)(i),

(B) all payments of Indebtedness pursuant to and in accordance with Section 7.09(a)(x)(A), and

(C) any prepayment of revolving loans to the extent there is not an equivalent permanent reduction in commitments thereunder, plus

(iv) an amount equal to the aggregate net non-cash gain on Dispositions by the Borrower and the Restricted Subsidiaries during such period (other than Dispositions in the ordinary course of business) to the extent included in arriving at such Consolidated Net Income and the net cash loss on Dispositions to the extent otherwise added to arrive at Consolidated Net Income, plus

(v) increases in Consolidated Working Capital for such period (other than any such increases arising from acquisitions or Dispositions by the Borrower and the Restricted Subsidiaries completed during such period, the application of purchase accounting or the reclassification of items from short term to long term or vice versa), plus

(vi) cash payments by the Borrower and the Restricted Subsidiaries actually made during such period to the extent not financed with the proceeds of Funded Debt in respect of any purchase price holdbacks, earn-out obligations, long-term liabilities of the Borrower and the Restricted Subsidiaries (other than Indebtedness) to the extent such payments are not expensed during such period or are not deducted in calculating Consolidated Net Income for such period (and so long as there has not been any reduction in respect of such payments in arriving at Consolidated Net Income for such fiscal year), plus

(vii) [reserved], plus

(viii) [reserved], ***plus***

(ix) [reserved], ***plus***

(x) to the extent such were not deducted in calculating Consolidated Net Income for such period, the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by the Borrower and the Restricted Subsidiaries during such period that are made in connection with any prepayment of any principal of Indebtedness to the extent such prepayment of principal reduced Excess Cash Flow pursuant to **clause (b)(iii)** above or reduced the mandatory prepayment required by **Section 2.04(b)(i)**, ***plus***

(xi) without duplication of amounts deducted from Excess Cash Flow in prior periods, the aggregate consideration required to be paid in cash by the Borrower or any of the Restricted Subsidiaries pursuant to binding contracts, commitments, or binding purchase orders (to the extent not financed with the proceeds of Funded Debt, the “**Contract Consideration**”) entered into prior to or during such period relating to Permitted Acquisitions (or Investments similar to those made for Permitted Acquisitions) Capital Expenditures or acquisitions of intellectual property to be consummated; ***provided*** that, to the extent the aggregate amount actually utilized to finance such Permitted Acquisitions (or Investments similar to those made for Permitted Acquisitions), Capital Expenditures or acquisitions of intellectual property during any period is less than the Contract Consideration that reduced Excess Cash Flow for the prior period, the amount of such shortfall shall be added to the calculation of Excess Cash Flow for such period, ***plus***

(xii) the amount of cash taxes (including penalties and interest) paid or tax reserves set aside or payable (without duplication) in such period, to the extent they exceed the amount of tax expense deducted in calculating Consolidated Net Income for such period, ***plus***

(xiii) cash expenditures in respect of Hedge Agreements during such period to the extent not deducted in calculating Consolidated Net Income; ***plus***

(xiv) any amount related to items that were added to or not deducted from Net Income in calculating Consolidated Net Income or were added to or not deducted from Consolidated Net Income, in each case to the extent such items represented a cash payment which had not reduced Excess Cash Flow upon the accrual thereof in a prior Test Period, or an accrual for a cash payment, by the Borrower and its Restricted Subsidiaries or did not represent cash received by the Borrower and its Restricted Subsidiaries, in each case on a consolidated basis during such Test Period;

provided that, at the option of the Borrower, any item that meets the criteria of any sub-clause of this **clause (b)** after the end of the applicable period and prior to the applicable date of calculation of Excess Cash Flow for such period may, at the Borrower’s option, be included in the applicable period, but not in any calculation pursuant to this **clause (b)** for the subsequent calculation period if such election is made.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**Exchange Rate**” means, on any date with respect to any currency, the rate at which such currency may be exchanged into any other currency, as set forth at approximately 11:00 a.m., London time, on such date on the applicable Bloomberg page for such currency. In the event that such rate does not appear on any Bloomberg page, the Exchange Rate shall be determined by reference to such other publicly available service for displaying the exchange rates as may be selected by the Administrative Agent, or, in the event no such service is selected, such Exchange Rate shall instead be the arithmetic average of the spot rates of exchange of the Administrative Agent in the market where its foreign currency exchange operations in respect of such currency are then being conducted, at or about 10:00 a.m., local time, on such date for the purchase of the relevant currency for delivery two Business Days later; *provided* that, if at the time of any such determination, for any reason no such spot rate is being quoted, the Administrative Agent, after consultation with the Borrower, may use any reasonable method that it deems appropriate to determine such rate, and such determination shall be presumed correct absent manifest error.

“**Excluded Asset**” has the meaning specified in the Security Agreement.

“**Excluded Equity Interests**” has the meaning specified in the Security Agreement.

“**Excluded Incremental Facility**” means any Incremental Facility or Incremental Equivalent Debt

- (a) incurred after the date that is six months after the Closing Date,
- (b) in an original aggregate principal amount less than the greater of (A) 50.00% of Closing Date EBITDA and (B) 50.00% of TTM Consolidated Adjusted EBITDA,
- (c) incurred in connection with Permitted Investments,
- (d) incurred in reliance on the Ratio Amount,
- (e) with a final maturity date later than the date that is eight years after the Closing Date,
- (f) that is not a syndicated “term loan b” facility or
- (g) not denominated in Dollars.

“**Excluded Subsidiary**” means:

- (a) any Subsidiary that is not a wholly owned Subsidiary of a Loan Party;
- (b) any Foreign Subsidiary of the Borrower or of any direct or indirect Domestic Subsidiary or Foreign Subsidiary;
- (c) any FSHCO;
- (d) any Domestic Subsidiary that is a direct or indirect Subsidiary of a Foreign Subsidiary that is a CFC;

(e) any Subsidiary that is prohibited or restricted by applicable Law from providing a Guaranty or by a binding contractual obligation existing on the Closing Date or at the time of the acquisition of such Subsidiary (and not incurred in contemplation of such acquisition) from providing a Guaranty (*provided* that such contractual obligation is not entered into by the Borrower or its Restricted Subsidiaries principally for the purpose of qualifying as an “**Excluded Subsidiary**” under this definition) or if such Guaranty would require governmental (including regulatory) or third party (other than the Borrower or a Restricted Subsidiary) consent, approval, license or authorization, unless such consent, approval, license or authorization has been obtained;

(f) any special purpose securitization vehicle (or similar entity) including any Securitization Subsidiary created pursuant to a transaction permitted under this Agreement;

(g) any Subsidiary that is a not-for-profit organization;

(h) any Captive Insurance Subsidiary;

(i) any other Subsidiary with respect to which, as reasonably determined by the Borrower in good faith and in consultation with the Administrative Agent, the cost or other consequences (including any material adverse tax consequences) of providing the Guaranty shall be excessive in view of the benefits to be obtained by the Lenders therefrom;

(j) any other Subsidiary to the extent the provision of a Guaranty by such Subsidiary would result in material adverse tax consequences to the Borrower, the Borrower or any of the Restricted Subsidiaries as reasonably determined by the Borrower in good faith in consultation with the Administrative Agent;

(k) any Unrestricted Subsidiary; and

(l) any Immaterial Subsidiary;

provided that the Borrower, in its sole discretion, may cause any Restricted Subsidiary that is a Domestic Subsidiary that qualifies as an Excluded Subsidiary under clauses (a) through (l) above to become a Guarantor in accordance with the definition thereof (subject to completion of any requested “know your customer” and similar requirements of the Administrative Agent) and thereafter such Subsidiary shall not constitute an “**Excluded Subsidiary**” (unless and until the Borrower elects, in its sole discretion, to designate such Persons as an Excluded Subsidiary).

“**Excluded Swap Obligation**” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to any keepwell, support or other agreement for the benefit of such Guarantor and any and all guarantees of such Guarantor’s Swap Obligations by other Loan Parties) at the time the Guaranty of such Guarantor, or a grant by such Guarantor of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than

one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guaranty or security interest is or becomes excluded in accordance with the first sentence of this definition.

“**Excluded Taxes**” has the meaning specified in Section 3.01(a).

“**Existing Earnouts and Unfunded Holdbacks**” means those earnouts and unfunded holdbacks existing on the Closing Date.

“**Existing Indebtedness**” has the meaning specified in the Recitals.

“**Existing Indebtedness Documents**” means

(i) that certain Term Loan Credit Agreement, dated as of January 26, 2016 among Petco Animal Supplies, Inc. (f/k/a Pet Acquisition Merger Sub LLC, a Delaware limited liability company) as successor borrower, the lenders party thereto from time to time and Citibank, N.A., as administrative agent and as collateral agent (as amended by the First Amendment Agreement dated as of June 17, 2016 and the Second Amendment Agreement dated as of January 27, 2017, and as further amended, amended and restated, supplemented or otherwise modified from time to time, the “**Existing First Lien Credit Agreement**”) and

(ii) that certain Revolving Credit Agreement, dated as of January 26, 2016, among Petco Animal Supplies, the lenders party thereto and Citibank, N.A., as administrative agent and collateral agent (as may be amended, restated, supplemented or otherwise modified from time to time, the “**Existing ABL Credit Agreement**”).

“**Extended Loans**” means Extended Term Loans.

“**Extended Term Commitments**” means the Term Loan Commitments held by an Extending Lender.

“**Extended Term Loans**” means the Term Loans made pursuant to Extended Term Commitments.

“**Extending Lender**” means each Lender accepting an Extension Offer.

“**Extension**” has the meaning specified in Section 2.15(a).

“**Extension Amendment**” has the meaning specified in Section 2.15(b).

“**Extension Offer**” has the meaning specified in Section 2.15(a).

“**Facility**” means the Term Loans made by the Lenders to the Borrower pursuant to Section 2.01(a) (including the Initial Term Loans), any Extended Term Loans any Incremental Term Loans, or any Refinancing Term Loans, as the context may require.

“**FATCA**” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more

onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, and intergovernmental agreements entered into in connection with the foregoing, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities implementing such Sections of the Code.

“**FCPA**” means the United States Foreign Corrupt Practices Act of 1977, as amended or modified from time to time.

“**Federal Funds Rate**” means, for any day, the rate calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; *provided* that if the Federal Funds Rate for any day is less than zero, the Federal Funds Rate for such day will be deemed to be zero.

“**Financial Covenant**” has the meaning specified in Section 8.01(e).

“**First Lien Net Leverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated Secured Net Debt under (i) this Agreement, (ii) any Pari Passu Lien Debt, (iii) the ABL Credit Facility and (iv) Indebtedness secured on a pari passu basis with the ABL Credit Facility on the ABL Priority Collateral, in each case, outstanding as of the last day of such Test Period to (b) Consolidated Adjusted EBITDA of the Borrower for such Test Period.

“**Fitch**” means Fitch Ratings, Inc., and any successor thereto.

“**Fixed Incremental Amount**” means, as of the date of measurement, the sum of:

(a) the greater of (A) 100.00% of Closing Date EBITDA and (B) 100.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination; *plus*

(b) the aggregate principal amount of any voluntary prepayments, redemptions and repurchases (including amounts paid pursuant to “yank-a-bank” provisions with credit given to the amount actually paid in cash, if acquired below par) of (1) Term Loans, (2) other Pari Passu Lien Debt, (3) the ABL Credit Facility or (4) Indebtedness secured on a pari passu basis with the ABL Credit Facility on the ABL Priority Collateral, in each case except to the extent such prepayments were funded with the proceeds of long-term indebtedness of the Borrower or its Restricted Subsidiaries (and in the case of any revolving commitments, as long as there is a permanent reduction in such commitments); *minus*

(c) without duplication of any amounts incurred in reliance on this definition, the aggregate amount of any Incremental Equivalent Debt incurred and then outstanding in reliance on the Fixed Incremental Amount.

“**Floor**” means the benchmark rate floor, if any, provided in this Agreement initially (as of the date of execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to any applicable Benchmark.

“**Foreign Casualty Event**” has the meaning specified in Section 2.04(b)(v)(A).

“**Foreign Disposition**” has the meaning specified in Section 2.04(b)(v)(A).

“**Foreign Lender**” has the meaning specified in Section 3.01(b).

“**Foreign Plan**” means any material employee benefit plan, program or agreement maintained or contributed to by, or entered into with, the Borrower or any Restricted Subsidiary of the Borrower with respect to employees employed outside the United States (other than benefit plans, programs or agreements that are mandated by applicable Laws).

“**Foreign Subsidiary**” means any direct or indirect Subsidiary of the Borrower that is not a Domestic Subsidiary.

“**FRB**” means the Board of Governors of the Federal Reserve System of the United States.

“**FSHCO**” means any direct or indirect Subsidiary of the Borrower (including a disregarded entity) substantially all of the assets of which consist of equity Interests and/or Indebtedness (including any debt or other instrument treated as equity for U.S. federal income tax purposes) of one or more Foreign Subsidiaries that are CFCs or other FSHCOs.

“**Fund**” means any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course.

“**Funded Debt**” means all Indebtedness of the Borrower and the Restricted Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of such Person, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including Indebtedness in respect of the Loans.

“**GAAP**” means generally accepted accounting principles in the United States, as in effect from time to time; *provided however* that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision of a Loan Document to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof (including through the adoption of IFRS) on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof (including through the adoption of IFRS), then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

“**General Asset Sale Basket**” has the meaning specified in Section 7.05(j).

“**Global Intercompany Note**” means a promissory note substantially in the form of Exhibit H executed by the Borrower and each wholly owned Restricted Subsidiary.

“**Governmental Authority**” means the government of the United States or any other nation, or of any political subdivision thereof, whether state, provincial, territorial, municipal or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“**Grant Event**” means the occurrence of any of the following:

- (a) the formation or acquisition by a Loan Party of a new wholly owned Subsidiary (other than an Excluded Subsidiary);
 - (b) the designation in accordance with **Section 6.13** of a wholly owned Subsidiary (other than an Excluded Subsidiary) of any Loan Party as a Restricted Subsidiary;
 - (c) any Person (other than an Excluded Subsidiary) becoming a wholly owned Subsidiary of a Loan Party;
 - (d) any wholly owned Restricted Subsidiary of a Loan Party ceasing to be an Excluded Subsidiary;
- or
- (e) the designation of any Restricted Subsidiary as a Guarantor pursuant to the proviso in the definition of “Excluded Subsidiary”.

“**Granting Lender**” has the meaning specified in **Section 10.07(g)**.

“**Guarantee**” means, as to any Person, without duplication,

- (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the “**Primary Obligor**”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect,
 - (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation,
 - (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary obligation,
 - (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the Primary Obligor so as to enable the Primary Obligor to pay such Indebtedness or other monetary obligation, or
 - (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or

(b) any Lien (other than a Permitted Lien) on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien);

provided that the term “**Guarantee**” shall not include endorsements for collection or deposit, in either case in the ordinary course of business or customary, Permitted Liens, and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “**Guarantee**” as a verb has a corresponding meaning.

“**Guarantors**” means each Restricted Subsidiary of the Borrower that executed a counterpart to the Guaranty (or a joinder thereto) on the Closing Date or thereafter pursuant to **Section 6.11**, in each case, other than any Excluded Subsidiaries.

“**Guaranty**” means (a) the guaranty made by the Guarantors in favor of the Administrative Agent on behalf of the Secured Parties substantially in the form of **Exhibit E** and (b) each other guaranty and guaranty supplement delivered pursuant to **Section 6.11**.

“**Guaranty Release Event**” has the meaning specified in **Section 9.11(a)(i)(I)**.

“**Guaranty Supplement**” means the “**First Lien Guarantee Supplement**” as defined in the Guaranty.

“**Hazardous Materials**” means any hazardous or toxic chemicals, materials, substances or waste which is listed, classified or regulated by any Governmental Authority as “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic wastes,” “contaminants” or “pollutants,” or words of similar import, under any Environmental Law, including petroleum or petroleum products (including gasoline, crude oil or any fraction thereof), asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas and urea formaldehyde.

“**Hedge Agreement**” means any agreement with respect to

(a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and

(b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “**Master Agreement**”), including any such obligations or liabilities under any Master Agreement.

“**Hedge Bank**” means (i) any Person that is an Agent, a Lender, a Lead Arranger or an Affiliate or branch of any of the foregoing on the Closing Date (with respect to any Secured Hedge Agreement entered into on or prior to the Closing Date) or at the time it enters into a Secured Hedge Agreement, in its capacity as a party thereto, whether or not such Person subsequently ceases to be an Agent, a Lender, a Lead Arranger or an Affiliate or branch of any of the foregoing or (ii) any other Person designated by the Borrower to the Administrative Agent in writing and so long as such Person (a) agrees to appoint the Administrative Agent as its agent under the applicable Loan Documents and (b) agrees to be bound by the provisions of the applicable Loan Documents as a Hedge Bank.

“**HMT**” means Her Majesty’s Treasury of the United Kingdom.

“**Identified Transaction**” has the meaning specified in Section 9.11(b).

“**IFRS**” means International Financial Reporting Standards and applicable accounting requirements set by the International Accounting Standards Board or any successor thereto (or the Financial Accounting Standards Board, the Accounting Principles Board of the American Institute of Certified Public Accountants, or any successor to either such Board, or the SEC, as the case may be), as in effect from time to time.

“**Immaterial Subsidiary**” means any Subsidiary of the Borrower other than a Material Subsidiary.

“**Incremental Amendment**” has the meaning specified in Section 2.13(e).

“**Incremental Amount**” has the meaning specified in Section 2.13(c).

“**Incremental Equivalent Debt**” means Indebtedness; *provided* that at the time of incurrence thereof:

(a) the aggregate principal amount of all Incremental Equivalent Debt on any date such Indebtedness is incurred (or commitments with respect thereto are made) shall not, together with any Incremental Term Facilities then outstanding, exceed the Incremental Amount;

(b) any Incremental Equivalent Debt (i) that is Pari Passu Lien Debt incurred as term facilities shall not mature prior to the Latest Maturity Date of, and shall not have a Weighted Average Life to Maturity shorter than the remaining Weighted Average Life to Maturity of, the Initial Term Loans, or (ii) that is Junior Lien Debt or Indebtedness that is not secured by a Lien on any Collateral and incurred as term facilities shall not mature, or have scheduled amortization, prior to the date that is 91 days following the Latest Maturity Date of the Initial Term Loans;

provided that this **clause (b)** shall not apply to the incurrence of any such Indebtedness pursuant to the Inside Maturity Exception;

(c) except for Indebtedness incurred pursuant to the Inside Maturity Exception, any mandatory prepayments of any Incremental Equivalent Debt:

(i) that is Pari Passu Lien Debt shall be made on a *pro rata* basis or less than *pro rata* basis with any corresponding mandatory prepayment of the Loans and any Pari Passu Lien Debt (but not on a greater than *pro rata* basis, except for (A) any repayment of such Incremental Equivalent Debt at maturity and (B) any greater than *pro rata* repayment of such Incremental Equivalent Debt with the proceeds of a refinancing thereof); and

(ii) that comprises Junior Lien Debt or Indebtedness that is not secured by a Lien on all or any portion of the Collateral may not be made unless, to the extent required hereunder, such prepayments are first made or offered to the Loans and any Pari Passu Lien Debt on a *pro rata* basis.

(d) if such Incremental Equivalent Debt is in the form of floating rate term loans denominated in Dollars and is Pari Passu Lien Debt (other than an Excluded Incremental Facility), then the provisions of Section 2.13(h) shall apply as if such Incremental Equivalent Debt was Incremental Term Loans;

(e) (i) to the extent secured by the assets of any Loan Party, such Incremental Equivalent Debt shall not be secured by any Lien on any property or asset of any Loan Party that does not also secure the Initial Term Loans at the time of such incurrence (except (1) customary cash collateral in favor of an agent, letter of credit issuer or similar “fronting” lender, (2) Liens on property or assets applicable only to periods after the Latest Maturity Date of the Initial Term Loans at the time of incurrence and (3) any Liens on property or assets to the extent that a Lien on such property or asset is also added for the benefit of the Lenders under the Term Loans) and

(ii) to the extent incurred or guaranteed by any Loan Party, such Incremental Equivalent Debt shall not be incurred or guaranteed by any Loan Party other than the Borrower and the Guarantors (including any Person required to be a Guarantor) (except (1) for guarantees by other Persons that are applicable only to periods after the Latest Maturity Date of the Term Loans at the time of incurrence and (2) any such Person incurring or guaranteeing such Incremental Term Facilities that also guarantees the Term Loans); and

(f) the aggregate principal amount of Incremental Equivalent Debt incurred by Non-Loan Parties, together with the aggregate principal amount of Permitted Ratio Debt incurred by Non-Loan Parties, shall not exceed, in the aggregate, the greater of (A) 50.00% of Closing Date EBITDA and (B) 50.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination.

Incremental Equivalent Debt will be deemed to include any Registered Equivalent Notes issued in exchange therefor.

“**Incremental Facility**” has the meaning specified in Section 2.13(a).

“**Incremental Loans**” has the meaning specified in Section 2.13(a).

“**Incremental Term Facilities**” has the meaning specified in Section 2.13(a).

“**Incremental Term Loan Commitment**” means the commitment of a Lender to make or otherwise fund an Incremental Term Loan and “**Incremental Term Loan Commitments**” means such commitments of all Lenders in the aggregate.

“**Incremental Term Loan Exposure**” means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Incremental Term Loans of such Lenders; *provided*, at any time prior to the making of the Incremental Term Loans, the Incremental Term Loan Exposure of any Lender shall be equal to such Lender’s Incremental Term Loan Commitment.

“**Incremental Term Loans**” has the meaning specified in Section 2.13(a).

“**Indebtedness**” means, with respect to any Person, without duplication,

(a) any indebtedness (including principal or premium) of such Person in respect of borrowed money; any indebtedness evidenced by bonds, notes, debentures, loan agreements or similar instruments; letters of credit or bankers’ acceptances (or, without double counting, reimbursement agreements in respect thereof), and Capitalized Lease Obligations or the balance deferred and unpaid of the purchase price of any property to the extent that the same would be required to be shown as a long-term liability on the balance sheet for such Person prepared in accordance with GAAP;

(b) (i) to the extent not otherwise included, any guarantee obligation by such Person of the obligations of the type referred to in clause (a) of another Person (whether or not such items would appear upon the balance sheet of such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business and

(ii) to the extent not otherwise included, the obligations of the type referred to in clause (a) of another Person secured by a Lien (other than a Permitted Lien) on any property owned by such Person, whether or not such obligations are assumed by such Person and whether or not such obligations would appear upon the balance sheet of such Person; *provided* that the amount of such Indebtedness for purposes of this clause (ii) will be the lesser of the fair market value of such property at such date of determination and the amount of Indebtedness so secured;

(c) net obligations of such Person under any Hedge Agreement to the extent such obligations would appear as a net liability on a balance sheet of such Person (other than in the footnotes) prepared in accordance with GAAP; and

(d) all obligations of such Person in respect of Disqualified Equity Interests;

provided that, notwithstanding the foregoing, Indebtedness will be deemed not to include (1) contingent obligations incurred in the ordinary course of business unless and until such obligations are non-contingent, (2) trade payables, (3) customary purchase money obligations incurred in the

ordinary course, (4) earn-outs, purchase price holdbacks or similar obligations, (5) intercompany liabilities in the ordinary course of business, (6) Permitted Liens, (7) loans and advances made by Loan Parties having a term not exceeding 364 days (inclusive of any roll over or extension of terms (such loans and advances, “**Short Term Advances**”)), (8) Indebtedness of any direct or indirect parent company appearing on the balance sheet of such Person solely by reason of push down accounting under GAAP and (9) lease obligations other than in respect of a Capitalized Lease. The amount of any net obligation under any Hedge Agreement on any date shall be deemed to be the Swap Termination Value thereof as of such date.

“**Indemnified Liabilities**” has the meaning specified in Section 10.05.

“**Indemnitees**” has the meaning specified in Section 10.05.

“**Independent Financial Advisor**” means an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that is, in the good faith judgment of the Borrower, qualified to perform the task for which it has been engaged and that is independent of the Borrower and its Affiliates.

“**Information**” has the meaning specified in Section 10.08.

“**Initial Term Loan Commitment**” means, as to each Lender, its obligation to make an Initial Term Loan to the Borrower hereunder on the Closing Date, expressed as an amount representing the maximum principal amount of the Initial Term Loans to be made by such Lender under this Agreement, as such commitment may be (a) reduced from time to time pursuant to Section 2.05 and (b) reduced or increased from time to time pursuant to (i) assignments by or to such Lender pursuant to an Assignment and Assumption, (ii) a Refinancing Amendment or (iii) an Extension. The initial amount of each Lender’s Initial Term Loan Commitment is set forth on Schedule 2.01 under the caption “**Initial Term Loan Commitment**” or, otherwise, in the Assignment and Assumption or Refinancing Amendment pursuant to which such Lender shall have assumed its Initial Term Loan Commitment, as the case may be. The aggregate amount of the Initial Term Loan Commitments is \$1,700,000,000.

“**Initial Term Loans**” has the meaning assigned to such term in Section 2.01(a).

“**Inside Maturity Exception**” means Indebtedness consisting of, at the Borrower’s option, any combination of Incremental Facilities, Incremental Equivalent Debt, Credit Agreement Refinancing Debt and any Permitted Refinancing of the foregoing, in each case, that is (a) in an aggregate principal amount not to exceed the greater of (I) 50.00% of Closing Date EBITDA and (II) 50.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination or (b) not a syndicated “term loan b” facility.

“**Intellectual Property**” has the meaning specified in the Security Agreement.

“**Intellectual Property Security Agreements**” has the meaning specified in the Security Agreement.

“**Intercreditor Agreements**” means the Closing Date ABL Intercreditor Agreement, any Junior Lien Intercreditor Agreement, any Equal Priority Intercreditor Agreement and any other

intercreditor agreement governing lien priority, in each case that may be executed by the Collateral Agent from time to time pursuant to the terms hereof.

“**Interest Coverage Ratio**” means, as of any date, the ratio of (a) Consolidated Adjusted EBITDA to (b) Consolidated Interest Expense, in each case for the Test Period as of such date.

“**Interest Payment Date**” means,

(a) as to any Term Benchmark Loan, the last day of each Interest Period applicable to such Term Benchmark Loan and the applicable Maturity Date; *provided* that if any Interest Period for a Term Benchmark Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates,

(b) as to any Base Rate Loan, the last Business Day of each calendar quarter and the applicable Maturity Date and

(c) to the extent necessary to create a fungible tranche of Term Loans, the date of the incurrence of any Incremental Term Loans.

“**Interest Period**” means, as to each Term Benchmark Loan, the period commencing on the date such Term Benchmark Loan is disbursed or converted to or continued as a Term Benchmark Loan and ending on the date one, three or six months thereafter, or to the extent consented to by each applicable Lender, twelve months (or such period of less than one month as may be consented to by each applicable Lender), as selected by the Borrower in its Committed Loan Notice; *provided* that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Business Day;

(b) any Interest Period (other than an Interest Period having a duration of less than one month) that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the applicable Maturity Date.

“**Investment**” means, as to any Person, any direct or indirect acquisition or investment by such Person, by means of

(a) the purchase or other acquisition (including by merger, amalgamation or otherwise) of Equity Interests or debt or other securities of another Person;

(b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person, but excluding any Short Term Advances; or

(c) the purchase or other acquisition (in one transaction or a series of transactions, including by merger, amalgamation or otherwise) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of another Person;

provided that none of the following shall constitute an Investment (i) intercompany advances between and among the Borrower and its Restricted Subsidiaries relating to their cash management, tax and accounting operations in the ordinary course of business and (ii) intercompany loans, advances or Indebtedness between and among the Borrower and its Restricted Subsidiaries having a term not exceeding 364 days and made in the ordinary course of business.

“**Investment Grade Rating**” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P, or an equivalent rating by any other nationally recognized statistical rating agency selected by the Borrower.

“**IRS**” means Internal Revenue Service of the United States.

“**ISDA Definitions**” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“**Joint Bookrunners**” has the meaning specified in the introductory paragraph to this Agreement.

“**Joint Venture**” means (a) any Person which would constitute an “equity method investee” of the Borrower or any of the Restricted Subsidiaries and (b) any Person in whom the Borrower or any of the Restricted Subsidiaries beneficially owns any Equity Interest that is not a Restricted Subsidiary.

“**Joint Venture Investments**” means Investments in any Joint Venture (other than an Unrestricted Subsidiary) (a) in an aggregate amount not to exceed the greater of (I) 25.00% of Closing Date EBITDA and (II) 25.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination and (b) so long as the Total Net Leverage Ratio (after giving Pro Forma Effect to the incurrence of such Investment) shall be equal to or less than the Closing Date Total Net Leverage Ratio; *provided* that, in the case of any such Investment, no Specified Event of Default has occurred or is continuing or would result therefrom.

“**Judgment Currency**” has the meaning specified in **Section 2.17(b)**.

“**Junior Debt Repayment**” has the meaning specified in **Section 7.09(a)**.

“**Junior Financing**” means any Material Indebtedness that is contractually subordinated in right of payment to the Obligations expressly by its terms.

“**Junior Financing Documentation**” means any documentation governing any Junior Financing.

“**Junior Lien Debt**” means any Indebtedness that is intended by the Borrower to be secured by a Lien on all or any portion of the Collateral that has a priority that is contractually (or otherwise) junior in priority to the Lien on such Collateral that secure the Obligations (other than the ABL Obligations).

“**Junior Lien Intercreditor Agreement**” means an intercreditor agreement, substantially in the form attached hereto as Exhibit K (as the same may be modified in a manner satisfactory to the Administrative Agent, the Collateral Agent and the Borrower), or, if requested by the providers of Indebtedness permitted hereunder to be Junior Lien Debt, another lien subordination arrangement reasonably satisfactory to the Administrative Agent, the Collateral Agent and the Borrower, in each case as amended, restated, amended and restated, modified or supplemented from time to time in accordance with the terms hereof and thereof. Upon the request of the Borrower, the Administrative Agent and the Collateral Agent will execute and deliver a Junior Lien Intercreditor Agreement with one or more Debt Representatives for secured Indebtedness that is permitted to be incurred hereunder as Junior Lien Debt.

“**Latest Maturity Date**” means, at any date of determination, the latest maturity or expiration date applicable to any Loan or Commitment hereunder at such time, including the latest maturity or expiration date of any Incremental Loan, any Refinancing Term Loan, any Extended Term Loan, in each case as extended in accordance with this Agreement from time to time.

“**Laws**” means, collectively, all international, foreign, federal, state, provincial, territorial, municipal and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities and executive orders, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

“**LCA Election**” has the meaning specified in Section 1.08(f).

“**LCA Test Date**” has the meaning specified in Section 1.08(f).

“**Lead Arrangers**” has the meaning specified in the introductory paragraph to this Agreement.

“**Lender**” has the meaning specified in the introductory paragraph to this Agreement (and, for the avoidance of doubt, includes each Term Loan Lender), and their respective successors and assigns as permitted hereunder, each of which is referred to herein as a “**Lender**.” Each Additional Lender shall be a Lender to the extent any such Person has executed and delivered a Refinancing Amendment or an Incremental Amendment, as the case may be, and to the extent such Refinancing Amendment or Incremental Amendment shall have become effective in accordance with the terms hereof and thereof, and each Extending Lender shall continue to be a Lender. As of the Closing Date, Schedule 2.01 sets forth the name of each Lender.

“**Lending Office**” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“**Lien**” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory, deemed or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any Capitalized Lease having substantially the same economic effect as any of the foregoing); **provided** that in no event shall an operating lease in and of itself be deemed a Lien.

“**Lien Release Event**” has the meaning specified in **Section 9.11(a)(i)**.

“**Limited Condition Acquisition**” means any Acquisition Transaction or other Investment by the Borrower or one or more of its Restricted Subsidiaries whose consummation is not conditioned on the availability of, or on obtaining, third party financing.

“**Loan**” means a Term Loan made by a Lender to the Borrower under a Loan Document.

“**Loan Documents**” means, collectively, (a) this Agreement, (b) the Notes, (c) any Refinancing Amendment, Incremental Amendment or Extension Amendment, (d) the Guaranty, (e) the Collateral Documents, (f) the Intercreditor Agreements, and (g) the Global Intercompany Note.

“**Loan Parties**” means, collectively, the Borrower and the Guarantors.

“**Management Stockholders**” means (a) any Company Person who is an investor in the Borrower, (b) family members of any of the individuals identified in the foregoing clause (a), (c) trusts, partnerships or limited liability companies for the benefit of any of the individuals identified in the foregoing clause (a) or (b), and (d) heirs, executors, estates, successors and legal representatives of the individuals identified in the foregoing clause (a) or (b).

“**Margin Stock**” has the meaning set forth in Regulation U of the Board of Governors of the United States Federal Reserve System, or any successor thereto.

“**Market Capitalization**” means an amount equal to (i) the total number of issued and outstanding shares of Equity Interests of the Borrower (or any successor of the Borrower) on the date of the declaration or making of the relevant Restricted Payment multiplied by (ii) the arithmetic mean of the closing prices per share of such Equity Interests for the 30 consecutive trading days immediately preceding the date of declaration or making of such Restricted Payment.

“**Master Agreement**” has the meaning specified in the definition of “Hedge Agreement.”

“**Material Adverse Effect**” means any event, circumstance or condition that has had a materially adverse effect on (a) the business, operations, assets, liabilities (actual or contingent) or financial condition of the Borrower and its Restricted Subsidiaries, taken as a whole, and (b) the ability of the Loan Parties (taken as a whole) to perform their respective payment obligations under the Loan Documents.

“**Material Indebtedness**” means, as of any date, Indebtedness for borrowed money on such date of any Loan Party in an aggregate principal amount exceeding the Threshold Amount; **provided** that in no event shall any of the following be Material Indebtedness (a) Indebtedness

under a Loan Document, (b) obligations in respect of a Qualified Securitization Financing, (c) Capitalized Lease Obligations, (d) Indebtedness held by a Loan Party or any Indebtedness held by an Affiliate of a Loan Party and (e) Indebtedness under Hedge Agreements.

“**Material Subsidiary**” means, as of the Closing Date and thereafter at any date of determination, each of the Borrower’s Domestic Subsidiaries, (a) whose total assets at the last day of the most recent Test Period (when taken together with the total assets of the Restricted Subsidiaries of such Domestic Subsidiary at the last day of the most recent Test Period) were equal to or greater than 5.00% of the consolidated total assets of the Borrower and the Restricted Subsidiaries as of the last day of such Test Period, in each case determined in accordance with GAAP or (b) whose revenues for such Test Period (when taken together with the revenues of the Restricted Subsidiaries of such Domestic Subsidiary for such Test Period) were equal to or greater than 5.00% of the consolidated revenues of the Borrower and the Restricted Subsidiaries for such Test Period, in each case determined in accordance with GAAP; *provided* that if, at any time and from time to time after the date which is 30 days after the Closing Date (or such longer period as the Administrative Agent may agree in its sole discretion), Domestic Subsidiaries that are not Guarantors solely because they do not meet the thresholds set forth in clause (a) or (b) comprise in the aggregate more than (when taken together with the total assets of the Restricted Subsidiaries of such Domestic Subsidiaries at the last day of the most recent Test Period) 10.00% of the total consolidated assets of the Borrower and the Restricted Subsidiaries that are Domestic Subsidiaries as of the end of the most recently ended Test Period or more than (when taken together with the revenues of the Restricted Subsidiaries of such Domestic Subsidiaries for such Test Period) 10.00% of the consolidated revenues of the Borrower and the Restricted Subsidiaries that are Domestic Subsidiaries for such Test Period (or, in each case, on any date when re-designated as an Excluded Subsidiary pursuant to the definition of “**Excluded Subsidiary**”), then the Borrower shall, not later than sixty days after the date by which financial statements for such Test Period were required to be delivered pursuant to this Agreement or on the date of such re-designation, as applicable (or, in each case, such longer period as the Administrative Agent may agree in its reasonable discretion), (i) designate in writing to the Administrative Agent one or more of such Domestic Subsidiaries as “**Material Subsidiaries**” to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of **Section 6.11** with respect to any such Subsidiaries.

“**Materiality Threshold Amount**” means an amount equal to the greater of (A) 5.00% of Closing Date EBITDA and (B) 5.00% of TTM Consolidated Adjusted EBITDA.

“**Maturity Date**” means:

(a) with respect to the Initial Term Loans that have not been extended pursuant to Section 2.15, the date that is the earlier of (i) seven years after the Closing Date and (ii) the date such Term Loans are declared due and payable pursuant to Section 8.02;

(b) with respect to any tranche of Extended Term Loans, the earlier of (i) the final maturity date as specified in the applicable Extension Amendment and (ii) the date such tranche of Extended Term Loans are terminated and/or declared due and payable pursuant to Section 8.02;

(c) with respect to any Refinancing Term Loans, the earlier of (i) the final maturity date as specified in the applicable Refinancing Amendment and (ii) the date such Refinancing Term Loans are declared due and payable pursuant to Section 8.02; and

(d) with respect to any Incremental Term Loans, the earlier of (i) the final maturity date as specified in the applicable Incremental Amendment and (ii) the date such Incremental Term Loans are declared due and payable pursuant to Section 8.02;

provided, in each case, that if such day is not a Business Day, the applicable Maturity Date shall be the Business Day immediately preceding such day.

“**Maximum Rate**” has the meaning specified in Section 10.10.

“**Minority Investment**” means any Person other than a Subsidiary in which the Borrower or any Restricted Subsidiary owns any Equity Interests.

“**Moody’s**” means Moody’s Investors Service, Inc. and any successor thereto.

“**Multiemployer Plan**” means any multiemployer plan as defined in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA, to which any Loan Party or any of their respective ERISA Affiliates makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“**Net Cash Proceeds**” means, with respect to:

(a) the Disposition of any asset by the Borrower or any Restricted Subsidiary or any Casualty Event, the excess, if any, of:

(i) the sum of cash and Cash Equivalents received in connection with such Disposition or Casualty Event (including any cash and Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received and, with respect to any Casualty Event, any insurance proceeds or condemnation awards in respect of such Casualty Event actually received by or paid to or for the account of the Borrower or any of the Restricted Subsidiaries), over

(ii) the sum of,

(A) the principal amount, premium or penalty, if any, interest, breakage costs and other amounts on any Indebtedness that is secured by the asset subject to such Disposition or Casualty Event and required to be repaid in connection with such Disposition or Casualty Event (other than Indebtedness under the Loan Documents, Pari Passu Lien Debt or Junior Lien Debt),

(B) the out-of-pocket fees and expenses (including attorneys’ fees, accountants’ fees, investment banking fees, survey costs, title insurance premiums, and related search and re-cording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant and other customary fees) actually incurred by the Borrower or such Restricted Subsidiary in

connection with such Disposition or Casualty Event and restoration costs following a Casualty Event,

(C) taxes paid or reasonably estimated to be payable in connection therewith (including taxes imposed on the distribution or repatriation of any such Net Cash Proceeds),

(D) in the case of any Disposition or Casualty Event by a non-wholly owned Restricted Subsidiary, the *pro rata* portion of the Net Cash Proceeds thereof (calculated without regard to this **clause (D)**) attributable to minority interests and not available for distribution to or for the account of the Borrower or a wholly owned Restricted Subsidiary as a result thereof, and

(E) any reserve for adjustment in respect of (1) the sale price of such asset or assets established in accordance with GAAP and (2) any liabilities associated with such asset or assets and retained by the Borrower or any Restricted Subsidiary after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction, it being understood that “**Net Cash Proceeds**” shall include the amount of any reversal (without the satisfaction of any applicable liabilities in cash in a corresponding amount) of any reserve described in this **clause (E)**;

provided that (I) no net cash proceeds calculated in accordance with the foregoing realized in a single transaction or series of related transactions shall constitute Net Cash Proceeds unless such amount exceeds \$13,257,000 and (II) no such net cash proceeds shall constitute Net Cash Proceeds under this **clause (a)** in any fiscal year until the aggregate amount of all such net cash proceeds in such fiscal year exceeds \$27,150,000 (and thereafter only net cash proceeds in excess of such amount shall constitute Net Cash Proceeds under this **clause (a)**); and

(b) the sale, incurrence or issuance of any Indebtedness by the Borrower or any Restricted Subsidiary, the excess, if any, of:

(i) the sum of the cash and Cash Equivalents received in connection with such incurrence or issuance ***over***

(ii) taxes paid or reasonably estimated to be payable as a result thereof, fees (including investment banking fees, attorneys’ fees, accountants’ fees, underwriting fees and discounts), commissions, costs and other out-of-pocket expenses and other customary expenses, incurred by the Borrower or such Restricted Subsidiary in connection with such sale, incurrence or issuance.

“**Net Income**” means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP (determined, for the avoidance of doubt, on an unconsolidated basis) and before any reduction in respect of preferred stock dividends.

“**Net Short Lender**” means at any date of determination, each Lender that has a Net Short Position as of such date; *provided* that, for all purposes of this Agreement and the other Loan Documents, Unrestricted Lenders shall at all times be deemed not to be Net Short Lenders.

“**Net Short Position**” means, with respect to a Lender (other than an Unrestricted Lender), as of a date of determination, the net positive position, if any, held by such Lender that is remaining after deducting any long position that the Lender holds (i.e., a position (whether as an investor, lender or holder of Loans, debt obligations and/or Derivative Instruments) where the Lender is exposed to the credit risk of the Loan Parties) from any short positions (i.e., a position as described above, but where the Lender has a negative exposure to the credit risk described above).

For purposes of determining whether a Lender (other than an Unrestricted Lender) has a Net Short Position on any date of determination:

(a) Derivative Instruments shall be counted at the notional amount (in Dollars) of such Derivative Instrument; *provided* that, subject to **clause (e)** below, the notional amount of Derivative Instruments referencing an index that includes any of the Loan Parties or any bond or loan obligation issued or guaranteed by any Loan Party shall be determined in proportionate amount and by reference to the percentage weighting of the component which references any Loan Party or any bond or loan obligation issued or guaranteed by any Loan Party that would be a “**Deliverable Obligation**” or an “**Obligation**” (as defined in the ISDA CDS Definitions) of the Loan Parties;

(b) notional amounts of Derivative Instruments in other currencies shall be converted to the Dollar equivalent thereof by such Lender in accordance with the terms of such Derivative Instruments, as applicable; *provided* that if not otherwise provided in such Derivative Instrument, such conversion shall be made in a commercially reasonable manner consistent with generally accepted financial practices and based on the prevailing conversion rate determined (on a mid-market basis) by such Lender, acting in a commercially reasonable manner, on the date of determination;

(c) Derivative Instruments that incorporate either the 2014 ISDA Credit Derivatives Definitions or the 2003 ISDA Credit Derivatives Definitions, in each case as supplemented (or any successor definitions thereto, collectively, the “**ISDA CDS Definitions**”) shall be deemed to create a short position with respect to the Loans if such Lender is a protection buyer or the equivalent thereof for such Derivative Instrument and (A) the Loans are a ‘**Reference Obligation**’ under the terms of such Derivative Instrument (whether specified by name in the related documentation, included as a ‘**Standard Reference Obligation**’ on the most recent list published by Markit, if ‘**Standard Reference Obligation**’ is specified as applicable in the relevant documentation or in any other manner) or (B) the Loans would be a ‘**Deliverable Obligation**’ or an ‘**Obligation**’ (as defined in the ISDA CDS Definitions) of the Loan Parties under the terms of such Derivative Instrument;

(d) credit derivative transactions or other Derivative Instruments which do not incorporate the ISDA CDS Definitions shall be counted for purposes of the Net Short Position determination if, with respect to the Loans, such transactions are functionally equivalent to a transaction that offers such Lender protection in respect of the Loans; and

(e) Derivative Instruments in respect of an index that includes any of the Loan Parties or any instrument issued or guaranteed by any of the Loan Parties shall not be deemed to create a short position, so long as (A) such index is not created, designed, administered or requested by such Lender and (B) the Loan Parties, and any Deliverable Obligation of the Loan Parties, collectively, shall represent less than 5.00% of the components of such index.

“**Net Short Representation**” means, with respect to any Lender (other than an Unrestricted Lender) at any time, a representation (including any deemed representation, as the case may be) from such Lender to the Borrower that it is not (x) a Net Short Lender at such time or (y) knowingly and intentionally acting in concert with any of its Affiliates or branches for the express purpose of creating (and in fact creating) the same economic effect with respect to the Loan Parties as though such Lender were a Net Short Lender at such time.

“**Netted Tax Amount**” has the meaning specified in Section 2.04(b)(v).

“**Non-Bank Certificate**” has the meaning specified in Section 3.01(b).

“**Non-Consenting Lender**” has the meaning specified in Section 3.07.

“**Non-Defaulting Lender**” means, at any time, each Lender that is not a Defaulting Lender at such time.

“**Non-Hardwired Currencies**” means all Alternative Currencies other than Dollars.

“**Non-Loan Party**” means any Restricted Subsidiary of the Borrower that is not a Loan Party.

“**Not Otherwise Applied**” means, with reference to the amount of any Permitted Equity Issuances that is proposed to be applied to a particular use or transaction, that such amount was not previously applied in determining the permissibility of a transaction under the Loan Documents (including, for the avoidance of doubt, any use of such amount to increase the Available Amount, to fund a Specified Equity Contribution or to incur Contribution Indebtedness) where such permissibility was (or may have been) contingent on the receipt or availability of such amount, it being agreed that the incurrence of secured debt shall be deemed one use transaction for purposes of this definition.

“**Note**” means each of the Term Loan Notes.

“**Obligations**” means all,

(a) advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees and expenses that accrue after the commencement by or against any Loan Party of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, fees and expenses are allowed claims in such proceeding;

- (b) obligations of any Loan Party arising under any Secured Hedge Agreement; and
- (c) Cash Management Obligations;

provided that “**Obligations**” of any Guarantor shall exclude any Excluded Swap Obligations. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents (and any of their Subsidiaries to the extent they have obligations under the Loan Documents) include the obligation (including guarantee obligations) to pay principal, interest, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party and to provide Cash Collateral under any Loan Document.

“**OFAC**” means the Office of Foreign Assets Control of the U.S. Treasury Department.

“**OID**” means original issue discount.

“**Organization Documents**” means,

(a) with respect to any corporation, the certificate and/or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction);

(b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and

(c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“**Other Applicable ECF Indebtedness**” has the meaning specified in **Section 2.04(b)(i)**.

“**Other Applicable Indebtedness**” has the meaning specified in **Section 2.04(b)(ii)(B)**.

“**Other Connection Taxes**” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“**Other Taxes**” has the meaning specified in **Section 3.01(f)**.

“**Overnight Rate**” means, for any day, (a) with respect to any amount denominated in Dollars, the greater of (x) the Federal Funds Rate and (y) an overnight rate reasonably determined by the Administrative Agent in accordance with bank industry rules on interbank compensation and (b) with respect to any amount denominated in any Alternative Currency, the rate of interest

per annum reasonably determined by the Administrative Agent to be its cost of funding such amount.

“**Pari Passu Lien Debt**” means any Indebtedness that is intended by the Borrower to be secured by Liens on all or any portion of the Collateral that are *pari passu* in priority with the Liens on Collateral that secure the Obligations. For the avoidance of doubt, “**Pari Passu Lien Debt**” includes the Initial Term Loans as of the Closing Date.

“**Participant**” has the meaning specified in **Section 10.07(d)**.

“**Participant Register**” has the meaning specified in **Section 10.07(e)**.

“**Participation**” has the meaning specified in **Section 10.07(d)**.

“**Payment Conditions**” has the meaning assigned to such term in the ABL Credit Agreement.

“**PBGC**” means the Pension Benefit Guaranty Corporation or any successor thereto.

“**Pension Plan**” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Loan Party or any of their respective ERISA Affiliates or to which any Loan Party or any of their respective ERISA Affiliates contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made, or has had an obligation to make, contributions at any time in the preceding five plan years.

“**Periodic Term SOFR Determination Day**” has the meaning specified in the definition of “Term SOFR”.

“**Permitted Acquisition**” means an Acquisition Transaction together with other Investments undertaken to consummate such Acquisition Transaction; *provided* that:

(a) after giving Pro Forma Effect to any such Acquisition Transaction or Investment, at the applicable time determined in accordance with **Section 1.08(f)**, no Event of Default shall have occurred and be continuing;

(b) the business of such Person, or such assets, as the case may be, constitute a business permitted by the Loan Documents; and

(c) with respect to each such purchase or other acquisition, all actions required to be taken with respect to any such newly created or acquired Subsidiary (including each Subsidiary thereof that constitutes a Restricted Subsidiary) or assets in order to satisfy the requirements set forth in **Section 6.11** to the extent applicable shall have been taken (or shall be taken), to the extent required by such section (or arrangements for the taking of such actions after the consummation of the Permitted Acquisition shall have been made) (unless such newly created or acquired Subsidiary constitutes an Excluded Subsidiary or is designated as an Unrestricted Subsidiary).

“**Permitted Equity Issuance**” means any,

- (a) public or private sale or issuance of any Qualified Equity Interests of the Borrower (other than a Specified Equity Contribution);
- (b) contribution to the equity capital of the Borrower or any other Loan Party (other than (i) a Specified Equity Contribution or (ii) in exchange for Disqualified Equity Interests); or
- (c) sale or issuance of Indebtedness of the Borrower or a Restricted Subsidiary (other than intercompany Indebtedness) that have been converted into or exchanged for Qualified Equity Interests of the Borrower or a Restricted Subsidiary;

provided that the amount of any Permitted Equity Issuance will be the amount of cash and Cash Equivalents received by a Loan Party or Restricted Subsidiary in connection with such sale, issuances or contribution, and the fair market value of any other property received in connection with such sale, issuance or contribution, (measured at the time made), without adjustment for subsequent changes in the value.

“**Permitted Holders**” means:

- (a) the Sponsors;
- (b) the Management Stockholders; and
- (c) any group (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) of which the Persons described in **clauses (a)** or **(b)** above are members; *provided* that, without giving effect to the existence of such group or any other group, the Persons described in **clauses (a)** and **(b)** above, collectively, beneficially own (as defined in Rules 13(d) and 14(d) of the Exchange Act) Equity Interests representing at least a majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interest of the Borrower (or any Successor Borrower, if applicable) then held by such group

“**Permitted Investment**” means (a) any Permitted Acquisition, (b) any Acquisition Transaction and/or (c) any other Investment or acquisition permitted hereunder.

“**Permitted Investors**” means (a) a Sponsor, (b) each of the Affiliates and investment managers of a Sponsor, (c) any fund or account managed by any of the persons described in **clause (a)** or **(b)** of this definition, (d) any employee benefit plan of the Borrower or any of its subsidiaries and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan, and (e) investment vehicles of members of management of the Borrower and its Subsidiaries.

“**Permitted Junior Secured Refinancing Debt**” means any Credit Agreement Refinancing Indebtedness that is Junior Lien Debt.

“**Permitted Lien**” means any Lien not prohibited by **Section 7.01**.

“**Permitted Pari Passu Secured Refinancing Debt**” means any Credit Agreement Refinancing Indebtedness that is Pari Passu Lien Debt.

“**Permitted Ratio Debt**” means Indebtedness; *provided* that, at the time of incurrence thereof:

(a) immediately after giving effect to the issuance, incurrence, or assumption of such Indebtedness:

(i) in the case of any Pari Passu Lien Debt, the First Lien Net Leverage Ratio for the applicable Test Period is equal to or less than (A) the Closing Date First Lien Net Leverage Ratio or (B) with respect to Indebtedness that is incurred in connection with a Permitted Investment, the First Lien Net Leverage Ratio immediately prior to such incurrence;

(ii) in the case of any Junior Lien Debt, the Secured Net Leverage Ratio for the applicable Test Period is equal to or less than (A) the Closing Date Secured Net Leverage Ratio or (B) with respect to Indebtedness that is incurred in connection with a Permitted Investment, the Secured Net Leverage Ratio immediately prior to such incurrence; and

(iii) in the case of any Indebtedness that is not secured by a Lien on any Collateral, either:

(A) the Total Net Leverage Ratio for the applicable Test Period is equal to or less than (A) the Closing Date Total Net Leverage Ratio or (B) with respect to Indebtedness that is incurred in connection with a Permitted Investment, the Total Net Leverage Ratio immediately prior to such incurrence, or

(B) the Interest Coverage Ratio for the applicable Test Period is equal to or greater than (A) 2.00 to 1.00 or (B) with respect to Indebtedness that is incurred in connection with a Permitted Investment, the Interest Coverage Ratio immediately prior to such incurrence;

in each case, after giving Pro Forma Effect to the incurrence of such Indebtedness and any use of proceeds thereof and measured as of and for the Test Period immediately preceding the issuance, incurrence or assumption of such Indebtedness for which internal financial statements are available; *provided*, that the aggregate principal amount of Permitted Ratio Debt incurred by Non-Loan Parties, together with the aggregate principal amount of Incremental Equivalent Debt incurred by Non-Loan Parties, shall not exceed, in the aggregate, the greater of (I) 50.00% of Closing Date EBITDA and (II) 50.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination;

(b) to the extent such Permitted Ratio Debt is required to be subject to the provisions of the Closing Date ABL Intercreditor Agreement, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to, or is otherwise subject to the provisions of the Closing Date ABL Intercreditor Agreement or any other intercreditor agreement that may be executed from time to time and reasonably acceptable to the Administrative Agent;

(c) if such Indebtedness is intended to be Pari Passu Lien Debt or Junior Lien Debt, a Debt Representative acting on behalf of the holders of such Permitted Ratio Debt has become party to, or is otherwise subject to the provisions of the Closing Date ABL Intercreditor Agreement and (i) if such Permitted Ratio Debt is intended to be Pari Passu Lien Debt, an Equal Priority Intercreditor Agreement or (ii) if such Permitted Ratio Debt is intended to be Junior Lien Debt, a Junior Lien Intercreditor Agreement; and

(d) if such Permitted Ratio Debt is in the form of floating rate term loans and is Pari Passu Lien Debt (other than an Excluded Incremental Facility), then the provisions of **Section 2.13(h)** shall apply as if such Permitted Ratio Debt was in the form of Incremental Term Loans.

Permitted Ratio Debt will be deemed to include any Registered Equivalent Notes issued in exchange therefor.

“**Permitted Refinancing**” means, with respect to any Person, any modification, refinancing, refunding, replacement, renewal or extension of any Indebtedness of such Person; *provided* that

(a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, replaced, renewed or extended except by an amount equal to unpaid accrued interest and premium (including tender premiums) thereon, *plus* OID and upfront fees *plus* other fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, replacement, renewal or extension and by an amount equal to any existing commitments unutilized thereunder,

(b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to **Section 7.03(c)** or **Section 7.03(d)**, such modification, refinancing, refunding, replacement, renewal or extension has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the remaining Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, replaced, renewed or extended,

(c) such Indebtedness shall not be incurred or guaranteed by any Loan Party or Restricted Subsidiary other than a Loan Party or Restricted Subsidiary that was an obligor of the Indebtedness being exchanged, extended, renewed, replaced or refinanced and no additional Loan Parties or Restricted Subsidiaries shall become liable for such Indebtedness;

(d) if such Indebtedness being modified, refinanced, refunded, replaced, renewed, or extended is Junior Financing or Junior Lien Debt,

(i) to the extent such Indebtedness being modified, refinanced, refunded, replaced, renewed, or extended is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, replacement, renewal, or extension is subordinated in right of payment to the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, replaced, renewed or extended,

(ii) to the extent such Indebtedness being modified, refinanced, refunded, replaced, renewed, or extended is unsecured, such modification, refinancing, refunding, replacement, renewal or extension is either (A) unsecured or (B) secured only by Permitted Liens (*provided* that such incurrence will thereafter count in the calculation of any remaining basket capacity thereunder, while such Indebtedness remains outstanding); and

(iii) to the extent such Indebtedness being modified, refinanced, refunded, replaced, renewed, or extended is secured by Liens,

(A) such modification, refinancing, refunding, replacement, renewal or extension is either (1) unsecured or (2) secured only by Permitted Liens, *provided* that if such Indebtedness is Pari Passu Lien Debt or Junior Lien Debt,

(x) to the extent such Indebtedness being modified, refinanced, refunded, replaced, renewed, or extended is required to be subject to the provisions of the Closing Date ABL Intercreditor Agreement, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to, or is otherwise subject to the provisions of the Closing Date ABL Intercreditor Agreement or any other intercreditor agreement that may be executed from time to time and reasonably acceptable to the Administrative Agent and

(y) a Debt Representative acting on behalf of the holders of such Indebtedness has become party to, or is otherwise subject to the provisions of (1) if such Indebtedness is Pari Passu Lien Debt, an Equal Priority Intercreditor Agreement or (2) if such Indebtedness is Junior Lien Debt, a Junior Lien Intercreditor Agreement and

(B) to the extent that such Liens are subordinated to the Liens securing the Obligations, such modification, refinancing, refunding, replacement, renewal or extension is secured by Liens that are subordinated to the Liens securing the Obligations on terms at least as favorable to the Lenders as those contained in the documentation (including any intercreditor or similar agreements) governing the Indebtedness being modified, refinanced, replaced, refunded, replaced, renewed or extended;

(e) if such Indebtedness is secured by assets of the Borrower or any Restricted Subsidiary:

(i) such Indebtedness shall not be secured by Liens on any assets of the Borrower or any Restricted Subsidiary that are not also subject to, or would be required to be subject to pursuant to the Loan Documents, a Lien securing the Obligations (except (1) Liens on property or assets applicable only to periods after the Latest Maturity Date at the time of incurrence, (2) any Liens on property or assets to the extent that a Lien on such property or asset is also added for the benefit of the Lenders, (3) any Liens on property or assets under the Indebtedness being exchanged, extended, renewed, replaced or refinanced and

(4) with respect to Indebtedness of Non-Loan Parties, Liens on assets of any Non-Loan Party); and

(ii) if such Indebtedness is Pari Passu Lien Debt or Junior Lien Debt, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to, or is otherwise subject to the provisions of (A) if such Indebtedness is Pari Passu Lien Debt, an Equal Priority Intercreditor Agreement or (B) if such Indebtedness is Junior Lien Debt, a Junior Lien Intercreditor Agreement;

(f) in the case of any Permitted Refinancing in respect of any Permitted Pari Passu Secured Refinancing Debt or any Permitted Junior Secured Refinancing Debt, in each case, such Permitted Refinancing is secured by Liens on assets of Loan Parties that are subject to an Equal Priority Intercreditor Agreement or Junior Lien Intercreditor Agreement, as applicable; and

(g) in the case of any Permitted Refinancing in respect of any Incremental Equivalent Debt, such Permitted Refinancing shall be subject to the terms of **clause (c)** of the definition of “Incremental Equivalent Debt” as if such Permitted Refinancing were also Incremental Equivalent Debt.

Permitted Refinancing will be deemed to include any Registered Equivalent Notes issued in exchange therefor.

“**Permitted Reorganization**” means any transaction (a) undertaken to effect a corporate reorganization (or similar transaction or event) for operational or efficiency purposes or (b) related to tax planning or tax reorganization, in each case, as determined in good faith by the Borrower and entered into after the Closing Date; *provided* that, (i) no Event of Default is continuing immediately prior to such transaction and immediately after giving effect thereto and (ii) after giving effect to such transactions, the security interests of the Lenders in the Collateral (taken as a whole) and the Guarantees of the Obligations (taken as a whole), in each case, would not be materially impaired as a result thereof, and such transaction will not materially adversely affect the Borrower’s ability to make anticipated payments with respect to the Obligations as and when they become due (as determined in good faith by the Borrower).

“**Person**” means any natural person, corporation, limited liability company, unlimited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“**Petco Animal Supplies**” has the meaning specified in the Recitals.

“**Plan**” means any material “employee benefit plan” (as such term is defined in Section 3(3) of ERISA), other than a Foreign Plan, established or maintained by any Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any of their respective ERISA Affiliates.

“**Platform**” has the meaning specified in **Section 6.02**.

“**Pledged Debt**” has the meaning specified in the Security Agreement.

“**Pledged Equity**” has the meaning specified in the Security Agreement.

“**Prepayment Date**” has the meaning specified in Section 2.04(b)(vi).

“**Prepayment Notice**” means a written notice made pursuant to Section 2.04(a)(i) substantially in the form of Exhibit J.

“**Primary Obligor**” has the meaning specified in the definition of “Guarantee.”

“**Private-Side Information**” means any information with respect to the Borrower and its Subsidiaries that is not Public-Side Information.

“**Pro Forma Basis**” and “**Pro Forma Effect**” mean, with respect to compliance with any test or covenant or calculation hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Specified Transactions) in accordance with Section 1.08.

“**Pro Rata Share**” means,

(a) with respect to all payments, computations and other matters relating to the Term Loan of a given Class of any Lender at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Term Loan Exposure of such Class of such Lender at such time and the denominator of which is the aggregate Term Loan Exposure of such Class of all Lenders at such time; and

(b) with respect to all payments, computations and other matters relating to the Incremental Term Loans of any Lender at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Incremental Term Loan Exposure of such Lender at such time and the denominator of which is the aggregate Incremental Term Loan Exposure of all Lenders at such time.

“**PTE**” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“**Public Lenders**” means Lenders that do not wish to receive Private-Side Information.

“**Public-Side Information**” means information that does not constitute material non-public information (within the meaning of United States federal, state or other applicable securities laws) with respect to the Borrower or any of its Subsidiaries or any of their respective securities.

“**QFC**” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

“**QFC Credit Support**” has the meaning specified in Section 10.26(a).

“**Qualified Equity Interests**” means any Equity Interests that are not Disqualified Equity Interests.

“**Qualified Professional Asset Manager**” has the meaning specified in Section 9.16(a)(iii).

“**Qualified Securitization Financing**” means any Securitization Financing of a Securitization Subsidiary that meets the following conditions:

- (a) such Qualified Securitization Financing (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Borrower and the Securitization Subsidiary, as determined by the Borrower in good faith;
- (b) all sales, transfers and/or contributions of Securitization Assets and related assets to the Securitization Subsidiary are made at fair market value; and
- (c) the financing terms, covenants, termination events and other provisions thereof, including any Standard Securitization Undertakings, shall be market terms, as determined by the Borrower in good faith.

“**Ratio Amount**” means an aggregate principal amount that, after giving Pro Forma Effect to the incurrence thereof, would not result in:

- (a) with respect to an Incremental Facility or Incremental Equivalent Debt to be incurred as Pari Passu Lien Debt, the First Lien Net Leverage Ratio for the applicable Test Period being greater than (i) the Closing Date First Lien Net Leverage Ratio or (ii) with respect to Indebtedness that is incurred in connection with a Permitted Investment, the First Lien Net Leverage Ratio immediately prior to such incurrence;

- (b) with respect to any Incremental Facility or Incremental Equivalent Debt to be incurred as Junior Lien Debt, the Secured Net Leverage Ratio for the applicable Test Period being greater than (i) the Closing Date Secured Net Leverage Ratio or (ii) with respect to Indebtedness that is incurred in connection with a Permitted Investment, the Secured Net Leverage Ratio immediately prior to such incurrence;

- (c) with respect to any Incremental Facility or Incremental Equivalent Debt that is not secured by a Lien on any Collateral, either:

- (i) the Total Net Leverage Ratio for the applicable Test Period being greater than (A) the Closing Date Total Net Leverage Ratio or (B) with respect to Indebtedness that is incurred in connection with a Permitted Investment, the Total Net Leverage Ratio immediately prior to such incurrence; or

- (ii) the Interest Coverage Ratio for the applicable Test Period being (A) less than 2.00 to 1.00 or (B) with respect to Indebtedness that is incurred in connection with a Permitted Investment, the Interest Coverage Ratio immediately prior to such incurrence.

“**Recipient**” means (a) the Administrative Agent or (b) any Lender, as applicable.

“**Reference Date**” has the meaning specified in the definition of “Available Amount.”

“**Refinanced Debt**” has the meaning assigned to such term in the definition of “Credit Agreement Refinancing Indebtedness.”

“**Refinanced Loans**” has the meaning specified in **Section 10.01(e)(ii)**.

“**Refinancing Amendment**” means an amendment to this Agreement executed by each of (a) the Borrower, (b) the Administrative Agent and (c) each Additional Lender and Lender that agrees to provide any portion of the Credit Agreement Refinancing Indebtedness being incurred pursuant thereto, in accordance with **Section 2.14**.

“**Refinancing Commitments**” means any Refinancing Term Commitments.

“**Refinancing Loans**” means any Refinancing Term Loans.

“**Refinancing Term Commitments**” means one or more Classes of Term Loan commitments hereunder that result from a Refinancing Amendment.

“**Refinancing Term Loans**” means one or more Classes of Term Loans that result from a Refinancing Amendment.

“**Refunding Equity Interests**” has the meaning specified in **Section 7.06(o)**.

“**Register**” has the meaning specified in **Section 10.07(c)**.

“**Registered Equivalent Notes**” means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act, substantially identical notes (having the same Guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

“**Regulated Entity**” means

(a) any swap dealer registered with the U.S. Commodity Futures Trading Commission or security-based swap dealer registered with the U.S. Securities and Exchange Commission, as applicable; or

(b) any commercial bank with a consolidated combined capital and surplus of at least \$5,000,000,000 that is

(i) a U.S. depository institution the deposits of which are insured by the Federal Deposit Insurance Corporation;

(ii) a corporation organized under section 25A of the U.S. Federal Reserve Act of 1913;

(iii) a branch, agency or commercial lending company of a foreign bank operating pursuant to approval by and under the supervision of the Board under 12 C.F.R. part 211;

(iv) a non-U.S. branch of a foreign bank managed and controlled by a U.S. branch referred to in **clause (iii)**; or

(v) any other U.S. or non-U.S. depository institution or any branch, agency or similar office thereof supervised by a bank regulatory authority in any jurisdiction.

“**Related Indemnified Person**” of an Indemnitee means (a) any controlling person or controlled affiliate of such Indemnitee, (b) the respective directors, officers, or employees of such Indemnitee or any of its controlling persons or controlled affiliates and (c) the respective agents of such Indemnitee or any of its controlling persons or controlled affiliates, in the case of this **clause (c)**, acting at the instructions of such Indemnitee, controlling person or such controlled affiliate; *provided* that each reference to a controlled affiliate or controlling person in this definition shall pertain to a controlled affiliate or controlling person involved in the negotiation or syndication of the Facility.

“**Release Actions**” has the meaning specified in Section 9.11(b).

“**Release Certificate**” has the meaning specified in Section 9.11(b).

“**Release Date**” has the meaning specified in Section 9.11(b).

“**Release/Subordination Event**” has the meaning specified in Section 9.11(a)(i)(H).

“**Relevant Governmental Body**” means (i) with respect to a Benchmark or Benchmark Replacement in respect of any Benchmark applicable to Dollars, the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto, and (ii) with respect to a Benchmark Replacement for any Benchmark applicable to a currency other than Dollars, (a) the central bank for the applicable currency or any central bank or other supervisor which is responsible for supervising (1) such Benchmark or Benchmark Replacement for such currency or (2) the administrator of such Benchmark or Benchmark Replacement for such currency or (b) any working group or committee officially endorsed or convened by: (1) the central bank for such currency, (2) any central bank or other supervisor that is responsible for supervising either (x) such Benchmark or Benchmark Replacement for such currency or (y) the administrator of such Benchmark or Benchmark Replacement for such currency, or (3) the Financial Stability Board, or a committee officially endorsed or convened by the Financial Stability Board, or any successor thereto.

“**Replacement Loans**” has the meaning specified in Section 10.01(e)(ii).

“**Reportable Event**” means, with respect to any Pension Plan, any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the thirty day notice period has been waived.

“**Repricing Event**” means:

(a) the incurrence by the Borrower or any other Loan Party of any Indebtedness in the form of a syndicated term loan (including any new or additional Term Loans under this Agreement, whether incurred directly or by way of the conversion of the Initial Term Loans into a new tranche of replacement Term Loans under this Agreement) (i) having an All-In Yield that is less than the All-In Yield for the Initial Term Loans, and (ii) the proceeds of which are used to prepay (or, in

the case of a conversion, deemed to prepay or replace), in whole or in part, the outstanding principal of the Initial Term Loans; or

(b) any effective reduction in the All-In Yield applicable to the Initial Term Loans (e.g., by way of amendment, waiver or otherwise);

provided that a Repricing Event shall not include any event described in **clause (a)** or **(b)** above that (i) is not consummated for the primary purpose of lowering the All-In Yield applicable to the Initial Term Loans (as determined in good faith by the Borrower), or (ii) that is consummated in connection with a Change of Control or Transformative Acquisition.

“Required Facility Lenders” means, with respect to any Facility on any date of determination, Lenders having or holding more than 50.00% of the sum of (a) the aggregate principal amount of outstanding Loans under such Facility and (b) the aggregate unused Commitments under such Facility; *provided* that (i) any determination of Required Facility Lenders shall be subject to the limitations set forth in **Section 10.07(i)** with respect to Affiliated Lenders and (ii) the portion of outstanding Loans and the unused Commitments of such Facility, as applicable, held or deemed held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Facility Lenders.

“Required Lenders” means, as of any date of determination, Lenders having or holding more than 50.00% of the sum of the aggregate Term Loan Exposure of all Lenders; *provided* that (a) any determination of Required Lenders shall be subject to the limitations set forth in **Section 10.07(h)** with respect to Affiliated Lenders and (b) the aggregate Term Loan Exposure of or held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Responsible Officer” means the executive chairman, chief executive officer, president, senior vice president, senior vice president (finance), vice president, chief financial officer, chief operating officer, treasurer, manager of treasury activities or assistant treasurer, secretary, assistant secretary or other similar officer or Person performing similar functions of a Loan Party and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. Unless otherwise specified, all references herein to a **“Responsible Officer”** shall refer to a Responsible Officer of the Borrower.

“Restricted” means, when referring to cash or Cash Equivalents of the Borrower or any of the Restricted Subsidiaries, that such cash or Cash Equivalents appear (or would be required to appear) as “restricted” on a consolidated balance sheet of the Borrower or such Restricted

Subsidiary (unless such appearance is related to a restriction in favor of, the Administrative Agent, the Collateral Agent or any Lender).

“**Restricted Payment**” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of the Borrower or any of the Restricted Subsidiaries (in each case, solely to a holder of Equity Interests in such Person’s capacity as a holder of such Equity Interests other than dividends or distributions payable solely in Equity Interests (other than Disqualified Equity Interests) of the Borrower), or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest, or on account of any return of capital to the Borrower’s stockholders, partners or members (or the equivalent Persons thereof). For the avoidance of doubt, the payment of any Contractual Obligation that is based on, or measured with respect to the value of an Equity Interest, including any such Contractual Obligations constituting compensation arrangements, shall not be considered a Restricted Payment. The amount of any Restricted Payment not made in cash or Cash Equivalents shall be the fair market value of the securities or other property distributed by dividend or other otherwise.

“**Restricted Subsidiary**” means any Subsidiary of the Borrower other than an Unrestricted Subsidiary.

“**S&P**” means Standard & Poor’s, a division of S&P Global Inc., and any successor thereto.

“**Sale Leaseback Transaction**” means a sale leaseback transaction with respect to all or any portion of any real property, equipment or capital assets owned by a Loan Party or other property customarily included in such transactions.

“**Same Day Funds**” means disbursements and payments in immediately available funds.

“**Sanctions**” means any sanction administered or enforced by the United States government (including OFAC), the United Nations Security Council, the European Union or HMT.

“**SEC**” means the Securities and Exchange Commission, or any Governmental Authority succeeding to, or exercising jurisdiction outside of the United States, any of its principal functions.

“**Secured Hedge Agreement**” means any Hedge Agreement that is entered into by and between any Loan Party and any Hedge Bank and designated in writing by the Hedge Bank and the Borrower to the Administrative Agent as a “**Secured Hedge Agreement**” (but only if such Hedge Agreement has not been designated as a “Secured Hedge Agreement” under the ABL Credit Agreement)

“**Secured Net Leverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated Secured Net Debt outstanding as of the last day of such Test Period to (b) Consolidated Adjusted EBITDA of the Borrower for such Test Period.

“**Secured Parties**” means, collectively, the Administrative Agent, the Collateral Agent, the Lenders, each Hedge Bank party to a Secured Hedge Agreement, each Cash Management Bank party to an agreement governing Cash Management Obligations, the Supplemental Administrative

Agent and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to **Section 9.05** and **Section 9.12**.

“**Securities Act**” means the U.S. Securities Act of 1933, as amended.

“**Securitization Assets**” means the accounts receivable, royalty or other revenue streams, other rights to payment (including with respect to rights of payment pursuant to the terms of Joint Ventures) subject to a Qualified Securitization Financing and the proceeds thereof.

“**Securitization Fees**” means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees paid to a Person that is not a Securitization Subsidiary in connection with any Qualified Securitization Financing.

“**Securitization Financing**” means any transaction or series of transactions that may be entered into by the Borrower or any of its Subsidiaries pursuant to which the Borrower or any of its Subsidiaries may sell, convey or otherwise transfer to (a) a Securitization Subsidiary (in the case of a transfer by the Borrower or any of its Subsidiaries) or (b) any other Person (in the case of a transfer by a Securitization Subsidiary), or may grant a security interest or Lien in or on, any Securitization Assets of the Borrower or any of its Subsidiaries, and any assets related thereto, including all collateral securing such Securitization Assets, all contracts and all guarantees or other obligations in respect of such Securitization Assets, proceeds of such Securitization Assets and other assets that are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving Securitization Assets as determined by the Borrower in good faith.

“**Securitization Repurchase Obligation**” means any obligation of a seller or transferor of Securitization Assets in a Qualified Securitization Financing to repurchase Securitization Assets arising as a result of a breach of a Standard Securitization Undertaking, including as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, offset or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

“**Securitization Subsidiary**” means a wholly owned Subsidiary of the Borrower (or another Person formed for the purposes of engaging in a Qualified Securitization Financing in which the Borrower or any Subsidiary of the Borrower makes an Investment and to which the Borrower or any Subsidiary of the Borrower transfers Securitization Assets and related assets) that engages in no activities other than in connection with the financing of Securitization Assets of the Borrower or its Subsidiaries, all proceeds thereof and all rights (contingent and other), collateral and other assets relating thereto, and any business or activities incidental or related to such business, and which is designated by the Board of Directors of the Borrower or such other Person (as provided below) as a Securitization Subsidiary, and

- (a) no portion of the Indebtedness or any other obligation (contingent or otherwise) of which
 - (i) is guaranteed by the Borrower or any Subsidiary of the Borrower, other than another Securitization Subsidiary (excluding guarantees of obligations (other than the

principal of, and interest on, Indebtedness) pursuant to Standard Securitization Undertakings),

(ii) is recourse to or obligates the Borrower or any Subsidiary of the Borrower, other than another Securitization Subsidiary, in any way other than pursuant to Standard Securitization Undertakings or

(iii) subjects any property or asset of the Borrower or any Subsidiary of the Borrower, other than another Securitization Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings;

(b) with which none of the Borrower or any Subsidiary of the Borrower, other than another Securitization Subsidiary, has any material contract, agreement, arrangement or understanding other than on terms which the Borrower reasonably believes to be no less favorable to the Borrower or such Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Borrower; and

(c) to which none of the Borrower or any Subsidiary of the Borrower, other than another Securitization Subsidiary, has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results;

it being agreed that a Securitization Asset consisting of an obligation of or to any Affiliate of a Loan Party (other than another Loan Party or Restricted Subsidiary, unless otherwise permitted by **Section 7.05**) shall not result non-compliance with any of the foregoing provisions.

“Security Agreement” means, collectively, the Security Agreement executed by the Loan Parties, substantially in the form of **Exhibit F**, together with each Security Agreement Supplement executed and delivered pursuant to **Section 6.11**.

“Security Agreement Supplement” has the meaning specified in the Security Agreement.

“Short Term Advances” has the meaning specified in the definition of “Indebtedness.”

“Similar Business” means any business, the majority of whose revenues are derived from (a) business or activities conducted by the Borrower and the Restricted Subsidiaries on the Closing Date, (b) any business that is a natural outgrowth or reasonable extension, development or expansion of any such business or any business similar, reasonably related, incidental, complementary or ancillary to any of the foregoing or (c) any business that in the Borrower's good faith business judgment constitutes a reasonable diversification of businesses conducted by the Borrower and the Restricted Subsidiaries.

“SOFR” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“**Solvent**” and “**Solvency**” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the assets of such Person, on a consolidated basis with its Subsidiaries, exceeds its debts and liabilities, subordinated, contingent or otherwise, on a consolidated basis, (b) the present fair saleable value of the property of such Person, on a consolidated basis with its Subsidiaries, is greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, on a consolidated basis, as such debts and other liabilities become absolute and matured, (c) such Person, on a consolidated basis with its Subsidiaries, is able to pay its debts and liabilities, subordinated, contingent or otherwise, on a consolidated basis, as such liabilities become absolute and matured and (d) such Person, on a consolidated basis with its Subsidiaries, is not engaged in, and is not about to engage in, business for which it has unreasonably small capital. The amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

“**SPC**” has the meaning specified in **Section 10.07(g)**.

“**Specified Equity Contribution**” has the meaning assigned to such term in the ABL Credit Agreement.

“**Specified Event of Default**” means an Event of Default pursuant to **Section 8.01(a)** or an Event of Default pursuant to **Section 8.01(f)** with respect to the Borrower.

“**Specified Representations**” means those representations and warranties made by the Borrower in **Sections 5.01(a)** (with respect to organizational existence only), **5.01(b)(ii)**, **5.02(a)**, **5.02(b)(i)**, **5.04**, **5.13**, **5.16**, **5.17** and **5.18**.

“**Specified Transaction**” means any of the following identified by the Borrower as a “Specified Transaction” in the Borrower’s sole discretion:

- (a) transaction or series of related transactions, including Investments and Acquisition Transactions, that results in a Person becoming a Restricted Subsidiary,
- (b) any designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary,
- (c) any transaction or series of related transactions, including Dispositions, that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Borrower,
- (d) any acquisition or disposition of assets constituting a business unit, line of business or division of another Person or a facility,
- (e) any material acquisition or disposition,
- (f) any restructuring of the business of the Borrower, whether by merger, consolidation, amalgamation or otherwise,

(g) any incurrence or repayment of Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes),

(h) any Restricted Payment and

(i) transactions of the type given pro forma effect in any quality of earnings report prepared by a nationally recognized accounting firm and furnished to the Administrative Agent in connection with the Transactions or an Acquisition Transaction or other Investment consummated after the Closing Date.

“**Specified Transaction Adjustments**” has the meaning specified in **Section 1.08(c)**.

“**Sponsor**” means,

(a) (x) any funds, limited partnerships or co-investment vehicles managed or advised by CVC, (y) Canada Pension Plan Investment Board (or any funds, limited partnerships or co-investment vehicles managed or advised by Canada Pension Plan Investment Board) or any Affiliates of any of the foregoing Person(s) or (z) any direct or indirect Subsidiaries of any of the foregoing Person(s) (or jointly managed by any such Person(s) or over which any such Person(s) exercise governance rights) and

(b) any investors (including limited partners) in the Persons identified in **clause (a)** who are investors (including limited partners) in such Persons as of the Closing Date, and from time to time, invest directly or indirectly in the Borrower (but, in each case, excluding any portfolio companies of any of the foregoing).

“**Standard Securitization Undertakings**” means representations, warranties, covenants and indemnities entered into by the Borrower or any Subsidiary of the Borrower that are customary in a Securitization Financing.

“**Subsidiary**” means, with respect to any Person, any corporation, partnership, limited liability company, unlimited liability company or other entity of which

(a) the Equity Interests having ordinary voting power (other than Equity Interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors of such corporation, partnership, limited liability company, unlimited liability company or other entity are at the time owned by such Person or

(b) more than 50.00% of the Equity Interests are at the time owned by such Person. Unless otherwise indicated in this Agreement, all references to Subsidiaries will mean Subsidiaries of the Borrower. No Person shall be considered a Subsidiary of the Borrower unless the Borrower has the ability to Control such Subsidiary.

“**Subsidiary Guarantor**” or “**Subsidiary Loan Party**” means any Subsidiary (other than an Excluded Subsidiary) that is required to be a Guarantor pursuant to the terms of the Loan Documents.

“**Successor Borrower**” has the meaning specified in **Section 7.04(e)** together with such Person’s subsequent successors and assigns permitted hereunder.

“**Supplemental Administrative Agent**” and “**Supplemental Administrative Agents**” have the meanings specified in **Section 9.12(a)**.

“**Supported QFC**” has the meaning specified in **Section 10.26(a)**.

“**Swap Obligations**” means with respect to any Guarantor any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“**Swap Termination Value**” means, in respect of any one or more Hedge Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Agreements,

(a) for any date on or after the date such Hedge Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and

(b) for any date prior to the date referenced in **clause (a)**, the amount(s) determined as the mark-to-market value(s) for such Hedge Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedge Agreements (which may include a Lender or any Affiliate or branch of a Lender).

“**TARGET2**” means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilizes a single shared platform and which was launched on November 19, 2007.

“**TARGET Day**” means any day on which TARGET2 (or, if such payment system ceases to be operative, such other payment system, if any, determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in euros.

“**Taxes**” has the meaning specified in **Section 3.01(a)**.

“**Term Benchmark**” means when used in connection with any Loan, refers to whether such Loan bears interest at a rate determined by reference to:

(a) if such Loan is denominated in Dollars, Adjusted Term SOFR,

(b) if such Loan is denominated in Euros, (i) the rate per annum equal to the Euro Interbank Offered Rate (“**EURIBOR**”) as administered by the European Money Markets Institute (or any other Person that takes over the administration of such rate) for a period equal in length to such Interest Period, as displayed on the applicable Bloomberg page (or on any successor or substitute page or service providing such quotations as determined by the Applicable Administrative Agent from time to time; in each case, the “**EURIBOR Rate**”) at approximately 11:00 a.m. (Brussels, Belgium time), two (2) Business Days prior to the commencement of such Interest Period; provided, that if by such time the EURIBOR Rate in respect of such day has not been so published, or if such day is not a Business Day, then the EURIBOR Rate for such day will

be the EURIBOR Rate as published in respect of the first preceding Business Day for which such EURIBOR Rate was published thereon; provided further that any EURIBOR Rate so determined based on the first preceding Business Day shall be utilized for purposes of calculation of the Term Benchmark for no more than three (3) consecutive Business Days, and

(c) if such Loan is denominated in another Alternative Currency (other than Euros), the risk-free reference rate (**RFR**) applicable to such Alternative Currency as agreed to by the Administrative Agent, the Borrower and each Lender providing such Incremental Facility or Refinancing Loans (in its sole discretion);

provided, that notwithstanding the foregoing, Term Benchmark shall in no event be less than 0.75% per annum with respect to (a) Initial Term Loans made to the Borrower pursuant to Section 2.01(a), and (b) all other Term Loans, unless an alternate Floor is specifically noted in the documentation with respect to such other Term Loans or such documentation with respect to such other Term Loans specifically provides that there shall be no Floor.

“Term Benchmark Loan” means a Loan that bears interest at a rate based upon the applicable Term Benchmark.

“Term Loan” means the term loans made by the Lenders on the Closing Date to the Borrower pursuant to **Section 2.01(a)**. The term “Term Loan” shall be deemed to also include Initial Term Loans, Incremental Term Loans, Extended Term Loans and Refinancing Term Loans, to the extent not otherwise indicated and as the context may require.

“Term Loan Commitment” means, as to each Lender, its obligation to make a Term Loan to the Borrower hereunder (including any Initial Term Loan Commitment), expressed as an amount representing the maximum principal amount of the Term Loans to be made by such Lender under this Agreement, as such commitment may be

(a) reduced from time to time pursuant to **Section 2.05**,

(b) reduced or increased from time to time pursuant to (i) assignments by or to such Lender pursuant to an Assignment and Assumption, (ii) a Refinancing Amendment or (iii) an Extension and

(c) increased from time to time pursuant to an Incremental Amendment.

“Term Loan Exposure” means, with respect to any Lender, as of any date of determination, the outstanding principal Dollar Amount of the Term Loans of such Lender; *provided*, at any time prior to the making of the Term Loans, the Term Loan Exposure of any Lender shall be equal to the Dollar Amount such Lender’s Term Loan Commitment, or, with regard to any Incremental Amendment at any time prior to the making of the applicable Incremental Term Loans thereunder, the Term Loan Exposure of any Lender with respect to such Incremental Term Facility shall be equal to such Lender’s Incremental Term Loan Commitment thereunder.

“Term Loan Lender” means a Lender having a Term Loan Commitment or other Term Loan Exposure.

“**Term Loan Note**” means a promissory note of the Borrower payable to any Lender or its registered assigns, in substantially the form of Exhibit B-1 hereto, evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from the Term Loans made by such Lender.

“**Term SOFR**” means,

(a) for any calculation with respect to a Term Benchmark Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “**Periodic Term SOFR Determination Day**”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to a Base Rate Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “**Base Rate Term SOFR Determination Day**”) that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Base Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Base Rate SOFR Determination Day.

“**Term SOFR Adjustment**” means, for any calculation with respect to a Base Rate Loan or a Term Benchmark Loan denominated in Dollars, a percentage per annum as set forth below for the applicable Type of such Loan and Interest Period therefor:

Base Rate Loan:

| 0.11448%

Term Benchmark Loan:

<u>Interest Period</u>	<u>Percentage</u>
One month	0.11448 %
Three months	0.26161%
Six months	0.42826%

“**Term SOFR Administrator**” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

“**Term SOFR Reference Rate**” means the forward-looking term rate based on SOFR.

“**Termination Conditions**” means, collectively, (a) the payment in full in cash of the Obligations (other than (i) contingent indemnification obligations as to which no claim has been asserted, (ii) Obligations under Secured Hedge Agreements as to which alternative arrangements acceptable to the Hedge Bank thereunder have been made and (iii) Cash Management Obligations) and (b) the termination of the Commitments.

“**Test Period**” in effect at any time means the most recent period of four consecutive fiscal quarters of the Borrower ended on or prior to such time (taken as one accounting period) in respect of which financial statements for each quarter or fiscal year in such period are available (which may be internal financial statements except to the extent this Agreement otherwise expressly states that the Test Period is specified in a Compliance Certificate, in which case such financial statements shall have been delivered pursuant to **Section 6.01(a)** or **(b)** for the Test Period set forth in such Compliance Certificate). A Test Period may be designated by reference to the last day thereof (*i.e.*, the ‘**January 31st Test Period**’ of a particular year refers to the period of four consecutive fiscal quarters of the Borrower ended on or about January 31st of such year), and a Test Period shall be deemed to end on the last day thereof.

“**Threshold Amount**” means the greater of (A) 25.00% of Closing Date EBITDA and (B) 25.00% of TTM Consolidated Adjusted EBITDA.

“**Total Net Leverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated Net Debt as of the last day of such Test Period to (b) Consolidated Adjusted EBITDA of the Borrower for such Test Period.

“**Transaction Expenses**” means any fees or expenses incurred or paid by the Borrower or any of its Subsidiaries in connection with the Transactions, this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby, including any amortization thereof in any period, including any amortization thereof in any period.

“**Transactions**” means, collectively, the funding of the Initial Term Loans, the receipt of commitments under the ABL Credit Facility and the funding of the initial borrowings thereunder, the Closing Date Refinancing, and the payment of the Transaction Expenses.

“**Transformative Acquisition**” means any acquisition that is not permitted by the terms of any Loan Document immediately prior to the consummation of such acquisition.

“**Treasury Equity Interests**” has the meaning specified in Section 7.06(o).

“**TTM Consolidated Adjusted EBITDA**” means, as of any date of determination, the Consolidated Adjusted EBITDA of the Borrower and the Restricted Subsidiaries, determined on a Pro Forma Basis, for the most recent Test Period.

“**Type**” means, with respect to a Loan, its character as a Base Rate Loan or a Term Benchmark Loan.

“**UK Financial Institution**” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“**UK Resolution Authority**” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“**U.S. Lender**” has the meaning specified in Section 3.01(e).

“**U.S. Special Resolution Regimes**” has the meaning specified in Section 10.26(a).

“**Unadjusted Benchmark Replacement**” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment

“**Undisclosed Administration**” means, in relation to a Lender or its direct or indirect parent entity, the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian, or other similar official by a supervisory authority or regulator under or based on the law in the country where such Lender or such parent entity is subject to home jurisdiction supervision, if applicable law requires that such appointment not be disclosed.

“**Unfunded Advances/Participations**” means with respect to the Administrative Agent, the aggregate amount, if any (i) made available to the Borrower on the assumption that each Lender has made available to the Administrative Agent such Lender’s share of the applicable Borrowing available to the Administrative Agent as contemplated by Section 2.01(b)(ii) and (ii) with respect to which a corresponding amount shall not in fact have been returned to the Administrative Agent by the Borrower or made available to the Administrative Agent by any such Lender.

“**Unfunded Holdbacks**” means any contingent purchase price payment obligations in connection with any Permitted Investment.

“**Uniform Commercial Code**” means the Uniform Commercial Code or any successor provision thereof as the same may from time to time be in effect in the State of New York or the

Uniform Commercial Code or any successor provision thereof (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“**United States**” and “**U.S.**” mean the United States of America.

“**Unrestricted Lender**” means any Regulated Entity, any Lead Arranger or any of their respective Affiliates or branches.

“**Unrestricted Subsidiary**” means (a) each Securitization Subsidiary and (b) any Subsidiary of the Borrower designated by the Board of Directors of the Borrower as an Unrestricted Subsidiary pursuant to Section 6.13 subsequent to the date hereof and each Subsidiary of such Subsidiary, in each case, until such Person ceases to be an Unrestricted Subsidiary of the Borrower in accordance with Section 6.13 or ceases to be a Subsidiary of the Borrower.

“**U.S. Government Securities Business Day**” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“**USA PATRIOT Act**” means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Public Law No. 107-56 (signed into law October 26, 2001)), as amended or modified from time to time.

“**Weighted Average Life to Maturity**” means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

- (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment, by
- (b) the then outstanding principal amount of such Indebtedness;

provided that for purposes of determining the Weighted Average Life to Maturity of (i) any Refinanced Debt or Permitted Refinancing, (ii) any Indebtedness that is being modified, refinanced, refunded, renewed, replaced or extended, or (iii) any Term Loans for purposes of incurring any other Indebtedness (in any such case, the “**Applicable Indebtedness**”), the effects of any amortization payments or other prepayments made on such Applicable Indebtedness (including the effect of any prepayment on remaining scheduled amortization) prior to the date of the applicable modification, refinancing, refunding, renewal, replacement, extension or incurrence shall be disregarded.

“**wholly owned**” means, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (a) director’s qualifying shares and (b) nominal shares issued to foreign nationals to the extent required by applicable Law) are owned by such Person and/or by one or more wholly owned Subsidiaries of such Person.

“**Withdrawal Liability**” means the liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“**Withholding Agent**” means the Borrower, any Guarantor or the Administrative Agent.

“**Write-Down and Conversion Powers**” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
- (b)
 - (i) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof;
 - (ii) references in this Agreement to an Exhibit, Schedule, Article, Section, clause or sub-clause refer (A) to the appropriate Exhibit or Schedule to, or Article, Section, clause or sub-clause in this Agreement or (B) to the extent such references are not present in this Agreement, to the Loan Document in which such reference appears;
 - (iii) the term “including” is by way of example and not limitation;
 - (iv) the term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form;
 - (v) the phrase “permitted by” and the phrase “not prohibited by” shall be synonymous, and any transaction not specifically prohibited by the terms of the Loan Documents shall be deemed to be permitted by the Loan Documents;
 - (vi) the phrase “commercially reasonable efforts” shall not require the payment of a fee or other amount to any third party or the incurrence of any expense or liability by a Loan Party (or Affiliate) outside its ordinary course of its business;

(vii) the phrase “in good faith” when used with respect to a determination made by a Loan Party shall mean that such determination was made in the prudent exercise of its commercial judgment and shall be deemed to be conclusive if fully disclosed in writing (in reasonable detail) to the Administrative Agent and the Lenders and neither the Administrative Agent nor the Required Lenders have objected to such determination within ten Business Days of such disclosure to the Administrative Agent and the Lenders;

(viii) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including;” and

(ix) term “continuing” means, with respect to a Default or Event of Default, that it has not been cured (including by performance) or waived.

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction’s laws) (a “**Division**”), if (a) any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

Section 1.03 Accounting and Finance Terms; Accounting Periods; Unrestricted Subsidiaries; Determination of Fair Market Value. All accounting terms, financial terms or components of such terms not specifically or completely defined herein shall be construed in conformity with GAAP to the extent GAAP defines such term or a component of such term. To the extent GAAP does not define any such term or a component of any such term, such term shall be calculated by the Borrower in good faith. For purposes of calculating any consolidated amounts necessary to determine compliance by any Person and, if applicable, its Restricted Subsidiaries with any ratio or other financial covenant in this Agreement, Unrestricted Subsidiaries shall be excluded. Unless the context indicates otherwise, any reference to a “fiscal year” shall refer to a fiscal year of the Borrower ending on or about January 31 and any reference to a “fiscal quarter” shall refer to a fiscal quarter of the Borrower ending on or about April 30, July 31, October 31 or January 31. All determinations of fair market value under a Loan Document shall be made by the Borrower in good faith and, if such determination is consistent with a valuation or opinion of an Independent Financial Advisor, such determination shall be conclusive for all purposes under the Loan Documents or related to the Obligations.

Section 1.04 Rounding. Any financial ratios required to be satisfied in order for a specific action to be permitted under this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one decimal place more than the number of decimal places by which such ratio is expressed herein (the “**Applicable Decimal Place**”) and rounding the result up or down to the Applicable Decimal Place.

Section 1.05 References to Agreements, Laws, Etc. Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are permitted by this Agreement (including by way of amendment and/or waiver); and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

Section 1.06 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to New York City time (daylight or standard, as applicable).

Section 1.07 Available Amount Transactions. If more than one action occurs on any given date the permissibility of the taking of which is determined hereunder by reference to the amount of the Available Amount immediately prior to the taking of such action, the permissibility of the taking of each such action shall be determined independently, but in no event may any two or more such actions be treated as occurring simultaneously, i.e., each transaction must be permitted under the Available Amount as so calculated.

Section 1.08 Pro Forma Calculations; Limited Condition Acquisitions; Basket and Ratio Compliance.

(a) Notwithstanding anything to the contrary herein, the First Lien Net Leverage Ratio, the Secured Net Leverage Ratio, the Total Net Leverage Ratio and the Interest Coverage Ratio shall be calculated in the manner prescribed by this **Section 1.08**; *provided* that notwithstanding anything to the contrary in **clauses (b), (c) or (d)** of this **Section 1.08**, when calculating the First Lien Net Leverage Ratio for purposes of **Section 2.04(b)(i)** and the Asset Sale Prepayment Percentage, the events described in this **Section 1.08** that occurred subsequent to the end of the applicable Test Period shall not be given pro forma effect.

(b) For purposes of calculating the First Lien Net Leverage Ratio, the Secured Net Leverage Ratio, the Total Net Leverage Ratio and the Interest Coverage Ratio, Specified Transactions identified by the Borrower that have been made (i) during the applicable Test Period or (ii) subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a pro forma basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated Adjusted EBITDA and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period. If since the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of its Restricted Subsidiaries since the beginning of such Test Period shall have consummated any Specified Transaction identified by the Borrower that would have required adjustment pursuant to this **Section 1.08**, then the First Lien Net Leverage Ratio, the Secured Net Leverage Ratio, the Total Net Leverage Ratio and the Interest Coverage Ratio shall be calculated to give pro forma effect thereto in accordance with this **Section 1.08**.

(c) Whenever pro forma effect is to be given to a Specified Transaction, the pro forma calculations shall be made in good faith by a Responsible Officer and may include, for the avoidance of doubt, the amount of cost savings, operating expense reductions; synergies, material changes to amounts to be paid by or received by Loan Parties projected by the Borrower in good faith to be realized as a result of specified actions taken, committed to be taken or expected to be taken (calculated on a *pro forma* basis as though amounts had been realized on the first day of such Test Period and as if any such cost savings, operating expense reductions and synergies were realized during the entirety of such period) relating to such Specified Transaction, net of the amount of actual benefits realized during such period from such actions (such amounts, “**Specified Transaction Adjustments**”); *provided* that

(i) such Specified Transaction Adjustments are reasonably identifiable and quantifiable in the good faith judgment of the Borrower,

(ii) such actions are taken, committed to be taken or expected to be taken no later than twenty-four months after the date of such Specified Transaction, and

(iii) no amounts shall be included pursuant to this **clause (c)** to the extent duplicative of any amounts that are otherwise included in calculating Consolidated Adjusted EBITDA, whether through a *pro forma* adjustment or otherwise, with respect to any Test Period.

(d) In the event that the Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, retirement or extinguishment) any Indebtedness included in the calculations of the First Lien Net Leverage Ratio, the Secured Net Leverage Ratio, the Total Net Leverage Ratio and the Interest Coverage Ratio, as the case may be (in each case, other than Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes), (i) during the applicable Test Period or (ii) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then the First Lien Net Leverage Ratio, the Secured Net Leverage Ratio, the Total Net Leverage Ratio and the Interest Coverage Ratio shall be calculated giving *pro forma* effect to such incurrence or repayment of Indebtedness, to the extent required, as if the same had occurred on the last day of the applicable Test Period with respect to leverage ratios or the first day of such Test Period with respect to the Interest Coverage Ratio.

(e) Notwithstanding anything in this Agreement or any Loan Document to the contrary,

(i) the Borrower may rely on more than one basket or exception within any Section (including both ratio-based and non-ratio based baskets and exceptions, and including partial reliance on different baskets that, collectively, permit the entire proposed transaction) at the time of any proposed transaction, and the Borrower may, in its sole discretion, at any later time divide, classify or reclassify such transaction (or any portion thereof) in any manner that complies with the available baskets and exceptions under such Section at such later time (*provided* that with respect to reclassification of Indebtedness

and Liens, any such reclassification shall be subject to the parameters of **Sections 7.01** and **7.03**, as applicable);

(ii) unless the Borrower elects otherwise, if the Borrower or its Restricted Subsidiaries in connection with any transaction or series of such related transaction

(A) incurs Indebtedness, creates Liens, makes Dispositions, makes Investments, designates any Subsidiary as restricted or unrestricted or repays any Indebtedness or takes any other action under or as permitted by a ratio-based basket and

(B) incurs Indebtedness, creates Liens, makes Dispositions, makes Investments, designates any Subsidiary as restricted or unrestricted or repays any Indebtedness or takes any other action under a non-ratio-based basket (which shall occur within five Business Days of the events in **clause (A)** above), then the applicable ratio will be calculated with respect to any such action under the applicable ratio-based basket without regard to any such action under such non-ratio-based basket made in connection with such transaction or series of related transactions;

(iii) if the Borrower or its Restricted Subsidiaries enters into any revolving, delayed draw or other committed debt facility, the Borrower may elect to determine compliance of such debt facility (including the incurrence of Indebtedness and Liens from time to time in connection therewith) with this Agreement and each other Loan Document on the date commitments with respect thereto are first received, assuming the full amount of such facility is incurred (and any applicable Liens are granted) on such date, in which case such committed amount may thereafter be borrowed or reborrowed, in whole or in part, from time to time, without further compliance with the Loan Documents, in lieu of determining such compliance on any subsequent date (including any date on which Indebtedness is incurred pursuant to such facility); **provided** that, in each case, any future calculation of any such ratio based basket shall only include amounts borrowed and outstanding as of such date of determination; and

(iv) if the Borrower or any Restricted Subsidiary incurs Indebtedness under a ratio-based basket, such ratio-based basket (together with any other ratio-based basket utilized in connection therewith, including in respect of other Indebtedness, Liens, Dispositions, Investments, Restricted Payments or payments in respect of Junior Financing) will be calculated excluding the cash proceeds of such Indebtedness for netting purposes (i.e., such cash proceeds shall not reduce the Borrower's Consolidated Net Debt or Consolidated Secured Net Debt pursuant to **clause (b)** of the definition of such terms), **provided** that the actual application of such proceeds may reduce Indebtedness for purposes of determining compliance with any applicable ratio.

For example, if the Borrower incurs Indebtedness under the Fixed Incremental Amount on the same date that it incurs Indebtedness under the Ratio Amount, then the First Lien Net Leverage Ratio and any other applicable ratio will be calculated with respect to such incurrence under the Ratio Amount without regard to any incurrence of Indebtedness under the Fixed Incremental

Amount. Unless the Borrower elects otherwise, each Incremental Facility (or Incremental Equivalent Debt) shall be deemed incurred first under the Ratio Amount to the extent permitted (and calculated prior to giving effect to any substantially simultaneous incurrence of any Indebtedness based on a basket or exception that is not based on a financial ratio, including under the ABL Credit Facility, any revolving facility and/or the Fixed Incremental Amount), with any balance incurred under the Fixed Incremental Amount. For purposes of determining compliance with **Section 2.13**, in the event that any Incremental Facility or Incremental Equivalent Debt (or any portion thereof) meets the criteria of Ratio Amount or Fixed Incremental Amount, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Indebtedness (or any portion thereof) in any manner that complies with **Section 2.13** on the date of such classification or any such reclassification, as applicable.

- (f) Notwithstanding anything in this Agreement or any Loan Document to the contrary, when,
 - (i) calculating any applicable ratio in connection with the incurrence of Indebtedness, the creation of Liens, the making of any Disposition, the making of an Investment, the making of a Restricted Payment, the designation of a Subsidiary as restricted or unrestricted, the repayment of Indebtedness or for any other purpose;
 - (ii) determining the accuracy of any representation or warranty;
 - (iii) determining whether any Default or Event of Default has occurred, is continuing or would result from any action; or
 - (iv) determining compliance with any other condition precedent to any action or transaction;

in each case of **clauses (i)** through **(iv)** in connection with a Limited Condition Acquisition, the date of determination of such ratio, the accuracy of such representation or warranty (but taking into account any earlier date specified therein), whether any Default or Event of Default has occurred, is continuing or would result therefrom, or the satisfaction of any other condition precedent shall, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Acquisition, an "**LCA Election**"), be deemed to be the date the definitive agreements for such Limited Condition Acquisition are entered into (the "**LCA Test Date**"). If on a Pro Forma Basis after giving effect to such Limited Condition Acquisition and the other transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) such ratios, representations and warranties, absence of defaults, satisfaction of conditions precedent and other provisions are calculated as if such Limited Condition Acquisition or other transactions had occurred at the beginning of the most recent Test Period ending prior to the LCA Test Date for which financial statements are available, the Borrower could have taken such action on the relevant LCA Test Date in compliance with the applicable ratios or other provisions, such provisions shall be deemed to have been complied with, unless a Specified Event of Default is continuing on the date on which such Limited Condition Acquisition is consummated. For the avoidance of doubt,

- (i) if any of such ratios, representations and warranties, absence of defaults, satisfaction of conditions precedent or other provisions are exceeded or breached as a result of fluctuations in such ratio (including due to fluctuations in Consolidated Adjusted EBITDA), a change in facts and circumstances or other provisions at or prior to the consummation of the relevant Limited Condition Acquisition, such ratios, representations and warranties, absence of defaults, satisfaction of conditions precedent and other provisions will not be deemed to have been exceeded, breached, or otherwise failed as a result of such fluctuations or changed circumstances solely for purposes of determining whether the Limited Condition Acquisition and any related transactions is permitted hereunder and
- (ii) such ratios and compliance with such conditions shall not be tested at the time of consummation of such Limited Condition Acquisition or related Specified Transactions.

If the Borrower has made an LCA Election for any Limited Condition Acquisition, then in connection with any subsequent calculation of any ratio or basket availability with respect to any other Specified Transaction or otherwise on or following the relevant LCA Test Date and prior to the earlier of the date on which such Limited Condition Acquisition is consummated or the date that the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition, any such ratio or basket shall be calculated on a Pro Forma Basis assuming such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated. For purposes of any calculation pursuant to this **clause (f)** of the Interest Coverage Ratio, Consolidated Interest Expense may be calculated using an assumed interest rate for the Indebtedness to be incurred in connection with such Limited Condition Acquisition based on the indicative interest margin contained in any financing commitment documentation with respect to such Indebtedness or, if no such indicative interest margin exists, as reasonably determined by the Borrower in good faith.

(g) For purposes of calculating the Ratio Amount, Permitted Ratio Debt and **Section 7.01(i)** (including for purposes of **Section 7.03(I)(ii)**), the phrase “immediately prior to such incurrence” shall be construed to apply only if, at the time of such determination, on a Pro Forma Basis for such incurrence of Indebtedness and/or Liens (and for any related Permitted Investment, if applicable),

- (i) the First Lien Net Leverage Ratio would be greater than the Closing Date First Lien Net Leverage Ratio,
- (ii) the Secured Net Leverage Ratio would be greater than the Closing Date Secured Net Leverage Ratio,
- (iii) the Total Net Leverage Ratio would be greater than the Closing Date Total Net Leverage Ratio or
- (iv) the Interest Coverage Ratio would be less than 2.00 to 1.00.

(h) For purposes of determining the maturity date of any Indebtedness, bridge loans that are subject to customary conditions (as determined by the Borrower in good faith, including

conditions requiring no payment or bankruptcy event of default) that would either automatically be extended as, converted into or required to be exchanged for permanent refinancing shall be deemed to have the maturity date as so extended, converted or exchanged.

Section 1.09 Currency Equivalents Generally.

(a) No Default or Event of Default shall be deemed to have occurred under a Loan Document solely as a result of changes in rates of currency exchange occurring after the time any applicable action (including any incurrence of a Lien or Indebtedness or the making of an Investment) so long as such action (including any incurrence of a Lien or Indebtedness or the making of an Investment) was permitted hereunder when made.

(b) For purposes of this Agreement and the other Loan Documents, where the permissibility of a transaction or determinations of required actions or circumstances depend upon compliance with, or are determined by reference to, amounts stated in Dollars, any requisite currency translation (i) with respect to Loans or Commitments, shall be based on the Exchange Rate and (ii) with respect to any other amounts, shall be based on the rate of exchange between the applicable currency and Dollars as reasonably determined by the Borrower, in each case in effect on the Business Day immediately preceding the date of such transaction or determination (subject to clauses (c) and (d) below) and shall not be affected by subsequent fluctuations in exchange rates.

(c) For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the Exchange Rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt (or, in the case of an LCA Election, on the date of the applicable LCA Test Date); *provided* that, if such Indebtedness is incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the Exchange Rate in effect on the date of such refinancing, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such Indebtedness so refinanced does not exceed the principal amount of such Indebtedness being refinanced. Notwithstanding the foregoing, the principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the Exchange Rate that is in effect on the date of such refinancing.

(d) For purposes of determining the First Lien Net Leverage Ratio, the Secured Net Leverage Ratio, the Total Net Leverage Ratio and the Interest Coverage Ratio, including Consolidated Adjusted EBITDA when calculating such ratios, all amounts denominated in a currency other than Dollars will be converted to Dollars for any purpose (including testing the any financial maintenance covenant) at the effective rate of exchange in respect thereof reflected in the consolidated financial statements of the Borrower for the applicable Test Period for which such measurement is being made, and will reflect the currency translation effects, determined in accordance with GAAP, of Hedge Agreements permitted hereunder for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar equivalent of such Indebtedness.

Section 1.10 Co-Borrowers. Notwithstanding anything herein to the contrary, the Borrower, upon 15 Business Days prior written notice to the Administrative Agent (or such shorter period as reasonably agreed by the Administrative Agent), may cause any Loan Party on or after the Closing Date by written election to the Administrative Agent to become a borrower (each such Loan Party, a “**Co-Borrower**”, and, together with the Borrower, the “**Co-Borrowers**”) under each of the Facilities hereunder on a joint and several basis (such date, the “**Co-Borrower Effective Date**”); *provided* that such Loan Party shall:

- (i) execute a joinder to this Agreement in form and substance reasonably satisfactory to the Administrative Agent assuming all obligations of a Co-Borrower hereunder,
- (ii) at least three Business Days prior to such Co-Borrower Effective Date, provide to the Administrative Agent and the Lenders all documentation and other information required by United States regulatory authorities under applicable “know your customer” and anti-money laundering Laws, including without limitation Title III of the USA Patriot Act, that shall be reasonably requested by the Administrative Agent in writing at least 10 Business Days prior to the consummation of such joinder,
- (iii) provide to the Administrative Agent and the Lenders, if such Loan Party qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, a Beneficial Ownership Certification,
- (iv) be a domestic Subsidiary Guarantor wholly owned by the Borrower and
- (v) not cause any Lender to be in violation of Law as a result of becoming a Co-Borrower.

The Lenders hereby irrevocably authorize the Administrative Agent to enter into any amendment to this Agreement or to any other Loan Document as may be necessary or appropriate in order to establish any additional Borrower pursuant to this **Section 1.10** and such technical amendments, and other customary amendments with respect to provisions of this Agreement relating to taxes for borrowers, in each case as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrower in connection therewith.

Upon the later of execution and delivery of a joinder to this Agreement by a Co-Borrower and the countersignature of the Administrative Agent thereto, each Co-Borrower agrees that it is jointly and severally liable for the obligations of each other Co-Borrower hereunder with respect to any Class of Loans on an individual tranche basis, including with respect to the payment of principal of and interest on all Loans on an individual tranche basis and the payment of fees and indemnities and reimbursement of costs and expenses. Each Co-Borrower is accepting joint and several liability hereunder in consideration of the financial accommodations to be provided by the Administrative Agent, the Collateral Agent and the Lenders under this Agreement, for the mutual benefit, directly and indirectly, of each of the Co-Borrowers and in consideration of the undertakings of each of the Co-Borrowers to accept joint and several liability for the obligations of each of them. Each Co-Borrower, jointly and severally, hereby irrevocably and unconditionally accepts, as a co-debtor, joint and several liability with each other Co-Borrower, with respect to the

payment and performance of all of the Obligations, it being the intention of the parties hereto that all Obligations shall be the joint and several obligations of all of the Co-Borrowers without preferences or distinction among them. If and to the extent that any of the Co-Borrowers shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of such Obligations in accordance with the terms thereof, then in each such event each other Borrower will make such payment with respect to, or perform, such Obligations. Each Co-Borrower further agrees that the Borrower will be such Co-Borrower's agent for administrative, mechanical, and notice provisions in this Agreement and any other Loan Document and the Lenders and the Administrative Agent hereby agree that each Co-Borrower will have the same rights under the Loan Documents as if it is the Borrower and for any other purposes under the provisions of this Agreement, including the affirmative and negative covenants, each such Co-Borrower will be treated as a Restricted Subsidiary that is a Subsidiary Guarantor.

ARTICLE II. THE COMMITMENTS AND BORROWINGS

Section 2.01 Term Loans.

(a) **Term Loan Commitments.** Subject only to the conditions set forth in Section 4.01, each Lender with an Initial Term Loan Commitment severally agrees to make to the Borrower on the Closing Date a term loan denominated in Dollars equal to such Lender's Initial Term Loan Commitment (the "**Initial Term Loans**"). Initial Term Loans may be Base Rate Loans or Term Benchmark Loans, as further provided herein. Amounts borrowed under this Section 2.01(a) and repaid or prepaid may not be reborrowed.

(b) **Borrowing Mechanics for Term Loans.**

(i) Subject to Section 4.01(a)(i) and Section 2.13(a), each Borrowing of Term Loans shall be made upon the Borrower's notice to the Administrative Agent, which may only be given in writing. Each such notice must be received by the Administrative Agent not later than (A) 1:00 p.m. three Business Days prior to the requested date of any Borrowing of Term Benchmark Loans and (B) 12:00 noon one Business Day prior to the requested date of any Borrowing of Base Rate Loans; **provided however** that:

(1) if the Borrower wishes to request Term Benchmark Loans having an Interest Period other than one, three or six months in duration as provided in the definition of "Interest Period," the applicable notice must be received by the Administrative Agent not later than 11:00 a.m. four Business Days prior to the requested date of such Borrowing (or such shorter period as reasonably agreed by the Administrative Agent), conversion or continuation, whereupon the Administrative Agent shall give prompt notice to the applicable Lenders of such request and determine whether the requested Interest Period is acceptable to all of them and not later than 11:00 a.m., three Business Days before the requested date of such Borrowing, conversion or continuation, the Administrative Agent shall notify the Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the applicable Lenders and

(2) any (I) such notice delivered in connection with the initial Borrowing of Term Loans on the Closing Date must be received by the Administrative Agent no later than 1:00 p.m. on the Closing Date and (II) such notices may be conditioned on the occurrence of the Closing Date or, with respect to an Incremental Facility, may be conditioned on the occurrence of any transaction anticipated to occur in connection with such Incremental Facility.

(ii) Each notice by the Borrower pursuant to this **Section 2.01(b)** must be delivered to the Administrative Agent in the form of a Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each Committed Loan Notice shall specify:

- (A) that the Borrower is requesting a Term Loan Borrowing,
- (B) the requested date of the Borrowing (which shall be a Business Day),
- (C) the principal amount of Term Loans to be borrowed,
- (D) the Type of Term Loans to be borrowed and
- (E) if applicable, the duration of the Interest Period with respect thereto.

If the Borrower fails to specify a Type of Term Loan in a Committed Loan Notice, then (x) in the case of Term Loans denominated in Dollars, the applicable Term Loans shall be made as Base Rate Loans and (y) in the case of Term Loans denominated in an Alternative Currency, the applicable Term Loans shall be made as Term Benchmark Loans with an Interest Period of one month. If the Borrower requests a Borrowing of Term Benchmark Loans in any such Committed Loan Notice, but fails to specify an Interest Period, for such Term Benchmark Loans, the Borrower will be deemed to have specified an Interest Period of one month.

(iii) Borrowings of more than one Type may be outstanding at the same time; *provided* that the total number of Interest Periods for Term Benchmark Loans outstanding under this Agreement at any time shall comply with **Section 2.07(d)**.

(iv) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Pro Rata Share of the applicable tranche of Term Loans. In the case of each Borrowing, each Appropriate Lender shall make the amount of its Term Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office not later than 1:00 p.m., on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions to such Borrowing, the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (A) crediting the account of the Borrower on the books of the Administrative Agent with the amount of such funds or (B) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower.

(v) The failure of any Lender to make the Term Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Term Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Term Loan to be made by such other Lender on the date of any Borrowing.

Section 2.02 Conversion/Continuation.

(a) Each conversion of Loans from one Type to another, and each continuation of Term Benchmark Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may only be given in writing. Each such notice must be received by the Administrative Agent not later than 1:00 p.m. (New York City time in the case of Loans denominated in Dollars, or London time in the case of any Borrowing denominated in Euros or another Alternative Currency) on the requested date of any conversion of Term Benchmark Loans to Base Rate Loans and not later than 2:00 p.m. three Business Days prior to the requested date of continuation of any Term Benchmark Loans or any conversion of Base Rate Loans to Term Benchmark Loans denominated in Dollars. Each notice by the Borrower pursuant to this Section 2.02(a) must be delivered to the Administrative Agent in the form of a Conversion/Continuation Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each conversion to or continuation of Term Benchmark Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Conversion/Continuation Notice shall specify (i) whether the Borrower is requesting a conversion of Loans from one Type to the other, or a continuation of Term Benchmark Loans, (ii) the requested date of the conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be converted or continued, (iv) the Class of Loans to be converted or continued, (v) the Type of Loans to which such existing Loans are to be converted, if applicable, and (vi) if applicable, the duration of the Interest Period with respect thereto. If (x) with respect to any Term Benchmark Loans denominated in Dollars, the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be converted to Base Rate Loans or (y) with respect to any Term Benchmark Loans denominated in any Alternative Currency, the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable tranche of Term Loans shall be converted to, a Term Benchmark Loan with an Interest Period of one month. Any such automatic conversion or continuation pursuant to the immediately preceding sentence shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Term Benchmark Loans. If the Borrower requests a conversion to, or continuation of Term Benchmark Loans in any such Conversion/Continuation Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Conversion/Continuation Notice, the Administrative Agent shall promptly notify each applicable Lender of its Pro Rata Share of the applicable Class of Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans or continuation of Loans described in Section 2.02(a).

(c) Except as otherwise provided herein, a Term Benchmark Loan may be continued or converted only on the last day of an Interest Period for such Term Benchmark Loan. Upon the occurrence and during the continuation of an Event of Default, the Administrative Agent or the Required Lenders may require by notice to the Borrower that no Loans denominated in Dollars may be converted to or continued as Term Benchmark Loans.

Section 2.03 Availability. Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's Pro Rata Share of such Borrowing, the Administrative Agent may assume that such Lender has made such Pro Rata Share available to the Administrative Agent on the date of such Borrowing, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available, then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, each of such Lender and the Borrower severally agrees to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent at (a) in the case of the Borrower, the interest rate applicable at the time to the applicable Loans comprising such Borrowing and (b) in the case of such Lender, the Overnight Rate *plus* any administrative, processing, or similar fees customarily charged by the Administrative Agent in accordance with the foregoing. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this Section 2.03 shall be conclusive in the absence of manifest error. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's applicable Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent. A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.03 shall be conclusive, absent manifest error.

Section 2.04 Prepayments.

(a) **Optional.**

(i) The Borrower may, upon notice to the Administrative Agent in the form of a Prepayment Notice, at any time or from time to time, voluntarily prepay the Loans in whole or in part without premium or penalty, subject to **clause (D)** below; *provided* that:

(a) such Prepayment Notice must be received by the Administrative Agent (1) not later than 1:00 p.m. (New York City time in the case of Loans denominated in Dollars, or London time in the case of Loans denominated in an Alternative Currency) three Business Days prior to any date of prepayment of Term Benchmark Loans and (2) not later than 1:00 p.m. one Business Day prior to any date of prepayment of Base Rate Loans;

(b) any prepayment of Term Benchmark Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding;

(c) any prepayment of Base Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding (it being understood that Base Rate Loans shall be denominated in Dollars only); and

(d) any prepayment of Initial Term Loans made on or prior to the date that is six months after the Closing Date shall be accompanied by the payment of the fee described in **Section 2.08(d)**, if applicable.

Each Prepayment Notice shall specify the date and amount of such prepayment and the Class(es) and Type(s) of Loans to be prepaid, and the payment amount specified in each Prepayment Notice shall be due and payable on the date specified therein. The Administrative Agent will promptly notify each Appropriate Lender of its receipt of a Prepayment Notice and of the amount of such Lender's Pro Rata Share of such prepayment; *provided*, "non-consenting" Lenders may be repaid on a non-pro rata basis in connection with an Extension Offer or a Refinancing Amendment and Disqualified Lenders or Net Short Lenders may be repaid on non-pro rata basis. Any prepayment of Loans shall be subject to **Section 2.04(c)**.

(ii) Notwithstanding anything to the contrary contained in this Agreement, the Borrower may rescind, in whole or in part, any notice of prepayment under **Section 2.04(a)(i)**, if such prepayment would have resulted from a refinancing of all or a portion of the applicable Facility which refinancing shall not be consummated or shall otherwise be delayed.

(iii) Voluntary prepayments of Term Loans permitted hereunder shall be applied in a manner determined at the discretion of the Borrower and specified in the notice of prepayment (and absent such direction, in direct order of maturity) and may be applied to any Class or Classes of Term Loans at the sole discretion of the Borrower.

(iv) Notwithstanding anything in any Loan Document to the contrary (including **Section 2.12**), the Borrower may prepay Term Loans of one or more Classes below par on a non-*pro rata* basis in accordance with the auction procedures set forth on **Exhibit L**;

provided that, in each case, no Event of Default has occurred and is continuing or would result therefrom and if the proceeds of loans under the ABL Credit Facility are used to finance such prepayment, immediately after giving effect to such prepayment and on a Pro Forma Basis for such prepayment, the Payment Conditions have been satisfied.

(b) **Mandatory.**

(i) ***Excess Cash Flow.*** Within five Business Days after financial statements have been delivered or are required to be delivered pursuant to **Section 6.01(a)** and the related Compliance Certificate has been delivered or is required to be delivered pursuant to

Section 6.02(a), in each case, commencing with the first full fiscal year ending after the Closing Date, the Borrower shall, subject to **Section 2.04(b)(iv)** and **Section 2.04(b)(v)**, prepay an aggregate principal amount of Initial Term Loans and any other Term Loans (unless such prepayment is not required pursuant to the terms of such other Term Loans) equal to,

(a) the ECF Prepayment Percentage of Excess Cash Flow, if any, for the fiscal year covered by such financial statements, *minus*

(b) the sum, without duplication, of,

(i) all voluntary prepayments of Term Loans and any other Pari Passu Lien Debt (including (A) those made through debt buybacks and in the case of below-par repurchases in an amount equal to the discounted amount actually paid in cash in respect of such below-par repurchase, (B) cash payments by the Borrower pursuant to **Section 3.07** or other applicable “yank-a-bank” provisions (solely to the extent the applicable Term Loans or other Pari Passu Lien Debt is retired instead of assigned) and (C) prepayments of Loans and Participations held by Disqualified Lenders or Net Short Lenders);

(ii) all voluntary payments and prepayments of loans under the ABL Credit Facility and any other revolving loans, in each case to the extent accompanied by a corresponding permanent reduction in commitments;

(iii) all voluntary prepayments of Junior Lien Debt (including those made through debt buybacks and in the case of below-par repurchases in an amount equal to the discounted amount actually paid in cash in respect of such below-par repurchase);

(iv) all voluntary prepayments of Indebtedness secured by Liens on Excluded Assets (including those made through debt buybacks and in the case of below-par repurchases in an amount equal to the discounted amount actually paid in cash in respect of such below-par repurchase);

(v) all voluntary prepayments of Indebtedness of the Borrower or a Restricted Subsidiary that is unsecured or secured by Liens on assets that are not Collateral (including those made through debt buybacks and in the case of below-par repurchases in an amount equal to the discounted amount actually paid in cash in respect of such below-par repurchase);

(vi) without duplication of amounts deducted pursuant to clause (VII) below and the definition of “Excess Cash Flow” herein in prior periods, the amount of Permitted Investments, including Acquisition Transactions (in each case, including costs and expenses related thereto), made during such period pursuant to **Section 7.02** (excluding **Section 7.02(hh)(i)**) to the extent that such Permitted Investments were not financed with the proceeds of Funded Debt;

(vii) without duplication of amounts deducted pursuant to the definition of “Excess Cash Flow”, the amount of Restricted Payments actually paid (and permitted to be paid) during such period pursuant to **Section 7.06** (excluding **Section 7.06(a)** and **7.06(s)(i)**) to the extent such Restricted Payments were not financed with the proceeds of Funded Debt; and

(viii) the aggregate amount of expenditures actually made by the Borrower and its Restricted Subsidiaries to the extent not financed with the proceeds of Funded Debt during such period (including expenditures for the payment of financing fees) to the extent that such expenditures are not expensed during such fiscal year or are not deducted in calculating Consolidated Net Income (and so long as there has not been any reduction in respect of such expenditures in arriving at Consolidated Net Income for such period);

in each case,

(I) during such fiscal year or following the end of such fiscal year and prior to the date of such calculation (*provided* that, with respect to any such amount following the end of such fiscal year, such amount is not included in any calculation pursuant to this **Section 2.04(b)(i)** for the subsequent fiscal year),

(II) to the extent such prepayments are not funded with the proceeds of Funded Debt and

(III) including, for the avoidance of doubt, assignments of such Indebtedness to the Borrower or a Restricted Subsidiary (and prepayments of such Indebtedness below par) to the extent of the amount paid in connection with such assignment (or prepayment);

provided that no such payment shall be required if such amount is equal to or less than the greater of (A) 10.00% of Closing Date EBITDA and (B) 10.00% of TTM Consolidated Adjusted EBITDA and only amounts in excess of such minimum will be subject to the repayment provisions of this **Section 2.04(b)**; *provided further* that if at the time that any such prepayment would be required, the Borrower is required to repay or repurchase or to offer to repurchase or repay Pari Passu Lien Debt pursuant to the terms of the documentation governing such Indebtedness with all or a portion of such Excess Cash Flow (such Pari Passu Lien Debt required to be repaid or repurchased or to be offered to be so repaid or repurchased, “**Other Applicable ECF Indebtedness**”), then the Borrower may apply such Excess Cash Flow on a *pro rata* basis to the prepayment of the Term Loans and to the repayment or re-purchase of Other Applicable ECF Indebtedness, and the amount of prepayment of the Term Loans that would have otherwise been required pursuant to this **Section 2.04(b)(i)** shall be reduced accordingly (for purposes of this proviso *pro rata* basis shall be determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other Applicable ECF Indebtedness at such time, with it being agreed that the portion of Excess Cash Flow allocated to the Other Applicable ECF Indebtedness shall not exceed the amount of such Excess Cash Flow required to be allocated to the Other

Applicable ECF Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such net proceeds shall be allocated to the Term Loans in accordance with the terms hereof).

- (ii) **Asset Sales; Casualty Events.** If the Borrower or any Loan Party,
 - (a) Disposes of any property or assets constituting Collateral pursuant to the General Asset Sale Basket (other than Dispositions of obsolete or worn out property, dispositions in the ordinary course of business and dispositions of assets no longer determined by the Borrower to be used or useful in its business), or
 - (b) any Casualty Event occurs with respect to property or assets constituting Collateral,

which, in either case, results in the realization or receipt by the Borrower or such Loan Party of Net Cash Proceeds, the Borrower shall prepay on or prior to the date which is ten Business Days after the date of the realization or receipt of such Net Cash Proceeds in excess of the greater of (I) 2.50% of Closing Date EBITDA and (II) 2.50% of TTM Consolidated Adjusted EBITDA for any transaction or series of related transactions, subject to **Sections 2.04(b)(iv)** and **2.04(b)(v)**, an aggregate principal amount of Initial Term Loans and any other Term Loans (unless such prepayment is not required pursuant to the terms of such other Term Loans) equal to the Asset Sale Prepayment Percentage of such Net Cash Proceeds realized or received; **provided** that if at the time that any such prepayment would be required, the Borrower is required to repay or repurchase or to offer to repurchase or repay Pari Passu Lien Debt pursuant to the terms of the documentation governing such Indebtedness with the proceeds of such Disposition or Casualty Event (such Pari Passu Lien Debt required to be repaid or repurchased or to be offered to be so repaid or repurchased, “**Other Applicable Indebtedness**”), then the Borrower may apply such Net Cash Proceeds on a *pro rata* basis to the prepayment of the Term Loans and to the repayment or repurchase of Other Applicable Indebtedness, and the amount of prepayment of the Term Loans that would have otherwise been required pursuant to this **Section 2.04(b)(ii)** shall be reduced accordingly (for purposes of this proviso *pro rata* basis shall be determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other Applicable Indebtedness at such time, with it being agreed that the portion of such net proceeds allocated to the Other Applicable Indebtedness shall not exceed the amount of such net proceeds required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such net proceeds shall be allocated to the Term Loans in accordance with the terms hereof); **provided further** that to the extent the holders of Other Applicable Indebtedness decline to have such indebtedness repurchased or prepaid, the declined amount shall promptly (and in any event within ten Business Days after the date of such rejection) be applied to prepay the Term Loans in accordance with the terms hereof; **provided further** that no prepayment shall be required pursuant to this **Section 2.04(b)(ii)** with respect to such portion of such Net Cash Proceeds that the Borrower intends to or may reinvest in accordance with this **Section 2.04(b)(ii)**.

With respect to any Net Cash Proceeds realized or received with respect to any Disposition or any Casualty Event that, in either case, is subject to the application of the foregoing provisions of this **Section 2.04(b)(ii)**, at the option of the Borrower or any of the Restricted Subsidiaries, the Borrower or any of its Restricted Subsidiaries may (in lieu of making a prepayment pursuant to the foregoing provisions) elect to reinvest an amount equal to all or any portion of such Net Cash Proceeds in any assets used or useful for the business of the Borrower and the Restricted Subsidiaries within eighteen months following receipt of such Net Cash Proceeds or if the Borrower or any of the Restricted Subsidiaries enters into a legally binding commitment to reinvest such Net Cash Proceeds within eighteen months following receipt of such Net Cash Proceeds, no later than one hundred and eighty days after the end of such eighteen month period; *provided* that if any portion of such amount is not so reinvested by such dates, subject to **Section 2.04(b)(iv)** and **Section 2.04(b)(v)**, an amount equal to the Asset Sale Prepayment Percentage of any such Net Cash Proceeds shall be applied within five Business Days after such dates to the prepayment of the Term Loans and Other Applicable Indebtedness as set forth above.

(iii) ***Indebtedness.*** If any of the Borrower or any Restricted Subsidiary incurs or issues any Funded Debt that is not expressly permitted to be incurred or issued pursuant to **Section 7.03** (other than Credit Agreement Refinancing Indebtedness), the Borrower shall prepay an aggregate principal amount of Initial Term Loans and any other Term Loans (unless such prepayment is not required pursuant to the terms of such other Term Loans) equal to 100.00% of all Net Cash Proceeds received therefrom on or prior to the date which is five Business Days after the receipt of such Net Cash Proceeds.

(iv) ***Application of Payments.***

(A) Except as may otherwise be set forth in any Refinancing Amendment, Extension Amendment or any Incremental Amendment, each prepayment of Term Loans pursuant to **Section 2.04(b)(i)**, **(ii)** or **(iii)** shall be applied ratably to each Class of Term Loans then outstanding,

(B) with respect to each Class of Loans, each prepayment pursuant to **clauses (i)** through **(iii)** of this **Section 2.04(b)** shall be applied to remaining scheduled installments of principal thereof following the date of prepayment as directed by the Borrower and specified in the notice of prepayment (and absent such direction, in direct order of maturity of the remaining installments under the applicable Class of Loans), and

(C) each such prepayment shall be paid to the Lenders in accordance with their respective Pro Rata Shares of such prepayment.

(v) ***Foreign and Tax Considerations.*** Notwithstanding any other provisions of this **Section 2.04(b)**,

(a) to the extent that any or all of the Net Cash Proceeds of any Disposition by a Foreign Subsidiary giving rise to a prepayment event pursuant to **Section 2.04(b)(ii)** (a “**Foreign Disposition**”), the Net Cash Proceeds of any Casualty Event

from a Foreign Subsidiary (a “**Foreign Casualty Event**”) or Excess Cash Flow of a Foreign Subsidiary are prohibited or delayed by applicable local law from being repatriated to the United States, the portion of such Net Cash Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Term Loans at the times provided in this **Section 2.04(b)** but may be retained by the applicable Foreign Subsidiary so long as the applicable local law will not permit repatriation to the United States (the Borrower hereby agreeing to cause the applicable Foreign Subsidiary to use its commercially reasonable efforts to promptly take all actions reasonably required by the applicable local law to permit such repatriation) and, if within 12 months of the applicable prepayment event, such repatriation of any of such affected Net Cash Proceeds or Excess Cash Flow is permitted under the applicable local law, such repatriation will be immediately effected and such repatriated Net Cash Proceeds or Excess Cash Flow will be promptly (and in any event not later than ten Business Days after such repatriation) applied (net of additional taxes payable or reserved against as a result thereof) to the repayment of the Term Loans pursuant to this **Section 2.04(b)** to the extent provided herein, and

(b) to the extent that the Borrower has determined in good faith and in consultation with the Administrative Agent that repatriation to the United States of any or all of the Net Cash Proceeds of any Foreign Disposition or any Foreign Casualty Event or any or all of the Excess Cash Flow of a Foreign Subsidiary would have material adverse tax consequences (relative to the relevant Foreign Disposition, Foreign Casualty Event or Excess Cash Flow and taking into account any foreign tax credit or benefit actually realized in connection with such repatriation) with respect to such Net Cash Proceeds or Excess Cash Flow, the Net Cash Proceeds or Excess Cash Flow so affected may be retained by the applicable Foreign Subsidiary; *provided* that, in the case of this **clause (B)**, on or before the date on which any Net Cash Proceeds so retained would otherwise have been required to be applied to reinvestments or prepayments pursuant to this **Section 2.04(b)** (or such Excess Cash Flow would have been required to be applied to prepayments pursuant to this **Section 2.04(b)**),

(1) the Borrower applies an amount equal to such Net Cash Proceeds or Excess Cash Flow to such reinvestments or prepayments (in the case of Net Cash Proceeds) and to such prepayments (in the case of Excess Cash Flow) as if such Net Cash Proceeds or Excess Cash Flow had been received by the Borrower rather than such Foreign Subsidiary, less the amount (the “**Netted Tax Amount**”) of additional taxes that would have been payable or reserved against it if such Net Cash Proceeds or Excess Cash Flow had been repatriated to the United States by such Foreign Subsidiary; *provided* that, in the case of this **clause (1)**, to the extent that within 12 months of the applicable prepayment event, the repatriation of any Net Cash Proceeds or Excess Cash Flow from such Foreign Subsidiary would no longer have material adverse tax consequences (relative to the relevant Foreign Disposition, Foreign Casualty Event or Excess Cash Flow), such Foreign Subsidiary shall promptly repatriate an amount equal to the Netted Tax Amount to the Administrative Agent, which amount shall

be applied to the pro rata prepayment of the Loans and Commitments pursuant to **Section 2.04(d)** or

(2) such Net Cash Proceeds or Excess Cash Flow are applied to the repayment of Indebtedness of a Foreign Subsidiary.

(vi) ***Mandatory Prepayment Procedures; Declining Lenders.*** The Borrower shall give notice to the Administrative Agent of any mandatory prepayment of the Loans pursuant to **Section 2.04(b)** by 11:00 a.m. at least three Business Days (or such shorter period as reasonably agreed by the Administrative Agent) prior to the date on which such payment is due. Such notice shall state that the Borrower is offering to make or will make such mandatory prepayment on or before the date specified in **Section 2.04(b)**, as the case may be (each, a “**Prepayment Date**”). Once given, such notice shall be irrevocable (*provided* that the Borrower may rescind any notice of prepayment if such prepayment would have resulted from a refinancing of all or any portion of the applicable Facility or been made in connection with a Disposition, which refinancing or Disposition shall not be consummated or shall otherwise be delayed) and all amounts subject to such notice shall be due and payable on the Prepayment Date (except as otherwise provided in **Section 2.04(b)(v)** and in the last sentence of this **Section 2.04(b)(vi)**). Upon receipt by the Administrative Agent of such notice, the Administrative Agent shall immediately give notice to each Lender of the prepayment, the Prepayment Date and of such Lender’s Pro Rata Share of the prepayment. Each Lender may elect (in its sole discretion) to decline all (but not less than all) of its Pro Rata Share of any mandatory prepayment by giving notice of such election in writing to the Administrative Agent by 11:00 a.m., on the date that is one Business Day after the date of such Lender’s receipt of notice from the Administrative Agent regarding such prepayment. If a Lender fails to deliver a notice of election declining receipt of its Pro Rata Share of such mandatory prepayment to the Administrative Agent within the time frame specified above, any such failure will be deemed to constitute an acceptance of such Lender’s Pro Rata Share of the total amount of such mandatory prepayment of Term Loans. Upon receipt by the Administrative Agent of such notice, the Administrative Agent shall immediately notify the Borrower of such election. Any amount so declined by any Lender shall be retained by the Borrower and the Restricted Subsidiaries and/or applied by the Borrower or any of the Restricted Subsidiaries in any manner not inconsistent with the terms of this Agreement.

(c) **Interest, Funding Losses, Etc.** All prepayments under this **Section 2.04** shall be accompanied by all accrued interest thereon, together with, in the case of any such prepayment of a Term Benchmark Loan on a date prior to the last day of an Interest Period therefor, any amounts owing in respect of such Term Benchmark Loan pursuant to **Section 3.05**.

(d) **Application of Prepayment Amounts.** In the event that the obligation of the Borrower to prepay the Loans shall arise pursuant to **Section 2.04(b)**, the Borrower shall prepay the outstanding principal amount of the Term Loans in the amount of such prepayment obligation within the applicable time periods specified in **Section 2.04(b)**, with such prepayment to be applied in the manner set forth in **Section 2.04(b)(iv)**.

Each payment or prepayment pursuant to the provisions of Section 2.04(b) shall be applied ratably among the Lenders of each Class holding the Loans being prepaid, in proportion to the principal amount held by each, and shall be applied as among the Term Loans being prepaid, (A) first, to prepay all Base Rate Loans and (B) second, to the extent of any excess remaining after application as provided in clause (A) above, to prepay all Term Benchmark Loans (and as among Term Benchmark Loans, (1) first to prepay those Term Benchmark Loans, if any, having Interest Periods ending on the date of such prepayment, and (2) thereafter, to the extent of any excess remaining after application as provided in clause (1) above, to prepay any Term Benchmark Loans in the order of the expiration dates of the Interest Periods applicable thereto).

Section 2.05 Termination or Reduction of Commitments.

(a) Optional. The Borrower may, upon written notice to the Administrative Agent, terminate the unused Commitments of any Class, or from time to time permanently reduce the unused Commitments of any Class, in each case without premium or penalty; *provided* that (i) any such notice shall be received by the Administrative Agent one Business Day prior to the date of termination or reduction and (ii) any such partial reduction shall be in an aggregate amount of \$1,000,000 or any whole multiple of \$500,000 in excess thereof or, if less, the entire amount thereof. Notwithstanding the foregoing, the Borrower may rescind or postpone any notice of termination of the Commitments if such termination would have resulted from a refinancing of all or a portion of the applicable Facility, which refinancing shall not be consummated or otherwise shall be delayed.

(b) Mandatory. The Initial Term Loan Commitment of each Lender shall be automatically and permanently reduced to \$0.00 upon the making of such Lender's Initial Term Loans pursuant to Section 2.01(a).

(c) Effect of Termination or Reduction. Any termination or reduction of the Commitments of any Class shall be permanent. Each reduction of Commitments of any Class shall be made ratably among the Lenders in accordance with their respective Pro Rata Share of Commitments of such Class.

Section 2.06 Repayment of Loans.

(a) The Borrower shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders

(i) on the last Business Day of each calendar quarter (commencing with the first full calendar quarter ending after the Closing Date) an aggregate principal amount equal to 0.25% of the aggregate principal amount of all Initial Term Loans outstanding on the Closing Date (which payments shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.04); *provided* that at the election of the Borrower (A) this clause (i) shall be amended, as it relates to any then-existing tranche of Term Loans to increase the amortization with respect thereto, in connection with the Borrowing of any Incremental Term Loans that constitute Pari Passu Lien Debt if and to the extent necessary so that such Incremental Term Loans and the applicable existing Term Loans form the same Class of Term Loans and to the extent

possible, a “fungible” tranche, in each case, without the consent of any party hereto, and (B) such amendments shall not decrease any amortization payment to any Lender that would have otherwise been payable to such Lender prior thereto, and

(ii) on the Maturity Date for each Class of Term Loans, the aggregate principal amount of all such Term Loans outstanding on such date.

Section 2.07 Interest.

(a) Subject to the provisions of Section 2.07(a)(i),

(i) each Term Benchmark Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate *per annum* equal to the Term Benchmark for such Interest Period *plus* the Applicable Rate; and

(ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable Borrowing date at a rate *per annum* equal to the Base Rate *plus* the Applicable Rate.

(b) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate *per annum* at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(c) If any amount (other than principal of any Loan) payable by the Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code or any other Debtor Relief Law, automatically and without further action by the Administrative Agent or any Lender) such amount shall thereafter bear interest at a fluctuating interest rate *per annum* at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(d) Accrued and unpaid interest on the principal amount of all outstanding past due Obligations (including interest on past due interest) shall be due and payable upon demand (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code or any other Debtor Relief Law, automatically and without further action by the Administrative Agent or any Lender).

(e) Interest on each Loan shall be due and payable (i) with respect to Base Rate Loans, in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein and (ii) with respect to Term Benchmark Loans, on each Interest Payment Date, and, in any event, every three months. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(f) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for any Term Benchmark Loans upon determination

of such interest rate. The determination of Term Benchmark by the Administrative Agent shall be conclusive in the absence of manifest error. At any time when Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the “prime rate” used in determining the Base Rate promptly following the public announcement of such change.

(g) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than ten Interest Periods in effect unless otherwise agreed between the Borrower and the Administrative Agent; *provided* that after the establishment of any new Class of Loans pursuant to a Refinancing Amendment or Extension, the number of Interest Periods otherwise permitted by this Section 2.07(d) shall increase by three Interest Periods for each applicable Class so established.

Section 2.08 Fees.

(a) The Borrower shall pay to the Agents such fees as shall have been separately agreed upon in writing (including pursuant to any fee letter executed with the Agents in connection with the Facilities) in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the applicable Agent).

(b) The Borrower agrees to pay on the Closing Date to each Lender party to this Agreement on the Closing Date, as fee compensation for the funding of such Lender’s Initial Term Loan, a closing fee (the “**Closing Fee**”) in an amount equal to 0.25% of the stated principal amount of such Lender’s Term Loan made on the Closing Date. The Closing Fee will be in all respects fully earned, due and payable on the Closing Date and non-refundable and non-creditable thereafter and the Closing Fee may be netted against Initial Term Loans (in the form of OID) made by such Lender.

(c) The Borrower agrees to pay to the Administrative Agent for its own account the fees payable in the amounts and at the times separately agreed upon.

(d) At the time of the effectiveness of any Repricing Event that is consummated during the period commencing on the Closing Date and ending on the day immediately prior to the date that is six months after the Closing Date, the Borrower agrees to pay to the Administrative Agent, for the ratable account of each lender with Initial Term Loans that are either repaid, converted or subjected to a pricing reduction in connection with such Repricing Event (including each Lender that withholds its consent to such Repricing Event and is replaced as a Non-Consenting Lender under Section 3.07), a fee in an amount equal to 1.00% of (i) in the case of a Repricing Event described in clause (a) of the definition thereof, the aggregate principal amount of all Initial Term Loans prepaid (or converted) in connection with such Repricing Event and (ii) in the case of a Repricing Event described in clause (b) of the definition thereof, the aggregate principal amount of all Initial Term Loans outstanding on such date that are subject to an effective pricing reduction pursuant to such Repricing Event. Such fees shall be earned, due and payable upon the date of the effectiveness of such Repricing Event. Notwithstanding anything to the contrary in the Loan Documents, each Lender hereby agrees to waive any amounts payable by the Borrower pursuant

to Section 3.05 that would have resulted from a refinancing of this Agreement or a Repricing Event.

Section 2.09 Computation of Interest and Fees. All computations of Base Rate Loans shall be made on the basis of a year of 365 days or 366 days. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided* that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.07(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.10 Evidence of Indebtedness.

(a) The Borrowings made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent, acting solely for purposes of Treasury Regulation Section 5f.103-1(c) or Proposed Treasury Regulation Section 1.163-5(b) (or, in each case, any amended or successor version), as non-fiduciary agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be *prima facie* evidence absent manifest error of the amount of the Borrowings made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

(b) Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note payable to such Lender, which shall evidence the relevant Class of such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(c) Entries made in good faith by the Administrative Agent in the Register pursuant to Section 2.10(a), and by each Lender in its account or accounts pursuant to Section 2.10(a), shall be *prima facie* evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error; *provided* that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement and the other Loan Documents.

Section 2.11 Payments Generally.

(a) All payments to be made by the Borrower shall be made on the date when due, in immediately available funds without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office for payment and in Same Day Funds not later than 1:00 p.m. (New York City time) in the case of any payment in Dollars and not later than 1:00 p.m. (London time) in the case of any payment in an Alternative Currency, in each case, on the date specified herein. The Administrative Agent will promptly distribute to each Appropriate Lender its Pro Rata Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent (i) after 1:00 p.m. (New York City time) in the case of payments in Dollars, (ii) after 1:00 p.m. (London time) in the case of payments in an Alternative Currency, shall, in each case, shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(c) Unless the Borrower has notified the Administrative Agent, prior to the date any payment is required to be made by it to the Administrative Agent hereunder for the account of any Lender that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to such Lender. If and to the extent that such payment was not in fact made to the Administrative Agent in Same Day Funds, then such Lender shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent in Same Day Funds at the applicable Overnight Rate from time to time in effect.

(d) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the Borrowing set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(e) The obligations of the Lenders hereunder to make Loans and to make payments pursuant to Section 9.07 are several and not joint. The failure of any Lender to make any Loan on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or purchase its participation.

(f) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(g) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in Section 8.03. If the Administrative Agent receives funds for application to the Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent may, but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender's Pro Rata Share of such of the outstanding Loans or other Obligations then owing to such Lender. Notwithstanding anything to the contrary, to the extent the Administrative Agent receives a payment or other amount after the date such payment or other amount is due, the Administrative Agent, in its sole discretion, may distribute such payment or other amount to the relevant Lender of record (or other Person of record entitled to such payment) as of the date such payment or other amount is received by the Administrative Agent.

(h) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.03, Section 2.12 or Section 9.07, then the Administrative Agent may, in its discretion and notwithstanding any contrary provision hereof, (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender for the benefit of the Administrative Agent, as applicable, to satisfy such Lender's obligations to such Persons until all such unsatisfied obligations are fully paid and/or (ii) hold any such amounts in a segregated account as cash collateral for, and application to, any future funding obligations of such Lender under any such Section, in the case of each of clauses (i) and (ii) above, in any order as determined by the Administrative Agent in its discretion.

(i) If a payment is made by the Administrative Agent (or its Affiliates) in error (whether known to the recipient or not) or if a Lender or another recipient of funds is not otherwise entitled to receive such funds under the provisions of this agreement at such time, in such amount or from the Administrative Agent (or its Affiliates) (as determined by the Administrative Agent in its sole discretion), then such Lender or recipient shall forthwith on demand repay to the Administrative Agent the portion of such payment that was made in error (or otherwise not intended to be received) (as determined by the Administrative Agent in its sole discretion) in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent (or its Affiliate) to such Lender or recipient to the date such amount is repaid to the Administrative Agent (or its Affiliate) in Same Day Funds at the applicable Overnight Rate from time to time in effect. Each Lender and other Person party hereto waives any claim of discharge for value or any other claim of entitlement to any portion of a payment that the Administrative Agent, in its sole discretion, determines was made in error.

Section 2.12 Sharing of Payments, Etc. If, other than as expressly provided elsewhere herein, any Lender shall obtain payment in respect of any principal of or interest on account of the Loans of a particular Class made by it (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (a) notify the Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the Loans made by them, as the case may

be, as shall be necessary to cause such purchasing Lender to share the excess payment in respect of such Loans or such participations, as the case may be, pro rata with each of them; **provided** that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each relevant Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. The provisions of this paragraph shall not be construed to apply to:

- (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement as in effect from time to time (including Section 2.04(a)(iv) and Section 10.07),
- (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant permitted hereunder or
- (C) any payment received by such Lender not in its capacity as a Lender.

The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of setoff, but subject to Section 10.09) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.12 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.12 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

Section 2.13 Incremental Borrowings.

(a) **Notice.** At any time and from time to time, on one or more occasions, the Borrower may, by notice to the Administrative Agent, increase the aggregate principal amount of any outstanding tranche of Term Loans or add one or more additional tranches of term loans under the Loan Documents (the "**Incremental Term Facilities**" and the term loans made thereunder, the "**Incremental Term Loans**" each such increase or tranche, an "**Incremental Facility**" and the loans or other extensions of credit made thereunder, the "**Incremental Loans**").

(b) **Ranking.** Incremental Facilities (i) may rank either *pari passu* or junior in right of payment with Term Loans (including the Initial Term Loans), (ii) may either be unsecured or secured by a Permitted Lien (including secured by Liens that secure the Facilities on a *pari passu*

or junior basis) and (iii) may be guaranteed by the Loan Parties (or Persons that become Loan Parties substantially concurrently with the incurrence of such Incremental Facility).

(c) **Size and Currency.** The aggregate principal amount of Incremental Facilities on any date Indebtedness thereunder is first incurred (or commitments with respect thereto are received in the case of a revolving or delayed draw facility), together with the aggregate principal amount of Incremental Equivalent Debt and other Incremental Facilities outstanding on such date, will not exceed, an amount equal to,

- (i) the Fixed Incremental Amount, *plus*
- (ii) the Ratio Amount,

(the sum of the Fixed Incremental Amount and the Ratio Amount, the “**Incremental Amount**”). Calculation of the Incremental Amount shall be made on Pro Forma Basis and evidenced by a certificate from a Responsible Officer of the Borrower demonstrating such calculation in reasonable detail. Each Incremental Facility will be in an integral multiple of \$1,000,000 and in an aggregate principal amount that is not less than \$10,000,000 (or such lesser minimum amount approved by the Administrative Agent in its reasonable discretion); *provided* that such amount may be less than such minimum amount or integral multiple amount if such amount represents all the remaining availability under the Incremental Amount at such time. Any Incremental Facility may be denominated in Dollars or in any Alternative Currency (and in the case of any Alternative Currency, the Dollar Amount thereof as of the date of incurrence (or, in the case of an LCA Election, as of the applicable LCA Test Date) shall be controlling for purposes of determining compliance with the Incremental Amount, and the minimum amount and integral multiples shall be a Dollar Amount of \$10,000,000 or \$1,000,000, respectively (or, in each case, such lesser minimum amount approved by the Administrative Agent in its reasonable discretion)).

(d) **Incremental Lenders.** Incremental Facilities may be provided by any existing Lender (it being understood that no existing Lender shall have an obligation to make, or provide commitments with respect to, an Incremental Loan) or by any Additional Lender. While existing Lenders may (but are not obligated to unless invited to and so elect) participate in any syndication of an Incremental Facility and may (but are not obligated to unless invited to and so elect) become lenders with respect thereto, the existing Lenders will not have any right to participate in any syndication of, and will not have any right of first refusal or other right to provide all or any portion of, any Incremental Facility or Incremental Loan except to the extent the Borrower and the arrangers thereof, if any, in their discretion, choose to invite or include any such existing Lender (which may or may not apply to all existing Lenders and may or may not be pro rata among existing Lenders). Final allocations in respect of Incremental Facilities will be made by the Borrower together with the arrangers thereof, if any, in their discretion, on the terms permitted by this **Section 2.13**; *provided* that the lenders providing the Incremental Facilities will be reasonably acceptable to (i) the Borrower and (ii) the Administrative Agent (except that, in the case of clause (ii), only to the extent such Person otherwise would have a consent right to an assignment of such loans or commitments to such lender, such consent not to be unreasonably withheld, conditioned or delayed). For the avoidance of doubt, any Affiliated Lender that provides any Incremental Loans shall be subject to the limitations on Affiliated Lenders set forth in **Section 10.07(h)** (including the Affiliated Lender Term Loan Cap, as applicable).

(e) **Incremental Facility Amendments; Use of Proceeds.** Each Incremental Facility will become effective pursuant to an amendment (each, an “**Incremental Amendment**”) to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower and each Person providing such Incremental Facility and the Administrative Agent. The Administrative Agent will promptly notify each Lender as to the effectiveness of each Incremental Amendment. Incremental Amendments may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary, advisable or appropriate, in the reasonable opinion of the Borrower in consultation with the Administrative Agent, to effect the provisions of this **Section 2.13** and, to the extent practicable, to make an Incremental Loan fungible (including for Tax purposes) with other Loans (subject to the limitations under **sub-clause (g)** of this Section). Without limiting the foregoing, an Incremental Amendment may (i) extend or add “call protection” to any existing tranche of Term Loans and (ii) amend the schedule of amortization payments relating to any existing tranche of Term Loans, including amendments to **Section 2.06(a)** (*provided* that any such amendment shall not decrease any amortization payment to any Lender that would have otherwise been payable to such Lender prior to the effectiveness of the applicable Incremental Amendment), in the case of each **clause (i)** and **(ii)**, so that such Incremental Term Loans and the applicable existing Term Loans form the same Class of Term Loans. Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Amendment, this Agreement and the other Loan Documents, as applicable, will be amended to the extent necessary to reflect the existence and terms of the Incremental Facility and the Incremental Term Loans evidenced thereby. This **Section 2.13** shall supersede any provisions in **Section 2.12** or **Section 10.01** to the contrary. The Borrower may use the proceeds of the Incremental Loans for any purpose not prohibited by this Agreement.

(f) **Conditions.** The availability of Incremental Facilities under this Agreement will be subject solely to the following conditions, subject, for the avoidance of doubt, to **Section 1.08**, measured on the date of the initial borrowing under such Incremental Facility (or in the case of a delayed draw or revolving facility, the receipt of commitments thereunder):

(i) no Event of Default shall have occurred and be continuing or would result therefrom; *provided* that the condition set forth in this **clause (i)** may be waived or not required (other than with respect to Specified Events of Default) by the Persons providing such Incremental Facilities if the proceeds of the initial Borrowings under such Incremental Facilities will be used to finance, in whole or in part, a Permitted Investment or other Acquisition Transaction; and

(ii) the representations and warranties in the Loan Documents will be true and correct in all material respects (except for representations and warranties that are already qualified by materiality, which representations and warranties will be true and correct in all respects) immediately prior to, and after giving effect to, the incurrence of such Incremental Facility; *provided* that the condition set forth in this **clause (ii)** may be waived or not required (other than with respect to the Specified Representations) by the Persons providing such Incremental Facilities if the proceeds of the initial Borrowings under such Incremental Facilities will be used to finance, in whole or in part, a Permitted Investment.

(g) **Terms.** Each Incremental Amendment will set forth the amount and terms of the relevant Incremental Facility. The terms of each Incremental Facility will be as agreed between the Borrower and the Persons providing such Incremental Facility; *provided* that:

(i) the final maturity date of any such Incremental Term Loans will be no earlier than the Latest Maturity Date of the Initial Term Loans; *provided* that this clause shall not apply to the incurrence of any Incremental Term Loans pursuant to the Inside Maturity Exception;

(ii) the Weighted Average Life to Maturity of any such Incremental Term Loans will be no shorter than the remaining Weighted Average Life to Maturity of the Initial Term Loans; *provided* that this clause shall not apply to the incurrence of any Incremental Term Loans pursuant to the Inside Maturity Exception;

(iii) any mandatory prepayment of such Incremental Term Loans may participate on a *pro rata* basis or a less than *pro rata* basis in any corresponding required mandatory repayments of the Initial Term Loans, but not on a greater than *pro rata* basis to the Initial Term Loans (other than (A) any repayment of such Incremental Term Loans at maturity and (B) any greater than *pro rata* repayment of such Incremental Term Loans with the proceeds of Credit Agreement Refinancing Indebtedness);

(iv) (A) to the extent secured, such Incremental Facilities shall not be secured by any Lien on any property or asset of the Borrower or any Guarantor that does not also secure the Initial Term Loans at the time of such incurrence (except (1) customary cash collateral in favor of an agent, letter of credit issuer or similar “fronting” lender, (2) Liens on property or assets applicable only to periods after the Latest Maturity Date of the Term Loans at the time of incurrence and (3) any Liens on property or assets to the extent that a Lien on such property or asset is also added for the benefit of the Lenders under the Term Loans) and

(B) to the extent guaranteed, such Incremental Facilities shall not be incurred or guaranteed by any Loan Party other than the Borrower and the Guarantors (including any Person required to be a Guarantor) (except (1) for guarantees by other Persons that are applicable only to periods after the Latest Maturity Date of the Term Loans at the time of incurrence and (2) any such Person incurring or guaranteeing such Incremental Term Facilities that also guarantees the Term Loans); and

(v) except as otherwise set forth herein, all terms of any Incremental Facility shall be on terms and pursuant to documentation to be determined by the Borrower and the providers of the Incremental Term Facility; *provided* that the operational and agency provisions contained in such documentation shall be reasonably satisfactory to the Administrative Agent.

(h) **Pricing.** The interest rate, fees and OID for any Incremental Term Loans will be as determined by the Borrower and the Persons providing such Incremental Term Loans; *provided* that in the event that the All-In Yield applicable to any floating-rate Incremental Term Loans (other

than any Excluded Incremental Facility) that are secured on a *pari passu* basis with the Initial Term Loans exceeds the All-In Yield (taking into account the leverage-based pricing grid therein and any comparable leverage-based pricing grid applicable to such Incremental Term Loans) for the Initial Term Loans by more than 75 basis points, then the interest rate margins for the Initial Term Loans shall be increased to the extent necessary so that the All-In Yield for such Term Loans is equal to the All-In Yield for such Incremental Term Loans *minus* 75 basis points.

(i) The Administrative Agent and the Lenders hereby agree that the minimum borrowing, *pro rata* borrowing and *pro rata* payment requirements contained elsewhere in this Agreement shall not apply to the transactions effected pursuant to Section 2.13.

Section 2.14 Refinancing Amendments.

(a) **Refinancing Loans.** The Borrower may obtain, from any Lender or any Additional Lender, Credit Agreement Refinancing Indebtedness in respect of all or any portion of the Term Loans, in the form of Refinancing Loans or Refinancing Commitments made pursuant to a Refinancing Amendment; ***provided*** that, for the avoidance of doubt Liens securing Refinancing Loans may be (and must only be) Permitted Liens.

(b) **Refinancing Amendments.** The effectiveness of any Refinancing Amendment will be subject only to the satisfaction on the date thereof of such conditions as may be requested by the providers of applicable Refinancing Loans. The Administrative Agent will promptly notify each Lender as to the effectiveness of each Refinancing Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement will be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Refinancing Loans incurred pursuant thereto (including any amendments necessary to treat the Term Loans subject thereto as Refinancing Term Loans).

(c) **Required Consents.** Any Refinancing Amendment may, without the consent of any Person other than the Administrative Agent, the Borrower and the Persons providing the applicable Refinancing Loans, effect such amendments to this Agreement and the other Loan Documents as may be necessary, advisable or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.14. This Section 2.14 supersedes any provisions in Section 2.12 or Section 10.01 to the contrary.

(d) **Providers of Refinancing Loans.** Refinancing Loans may be provided by any existing Lender (it being understood that no existing Lender shall have an obligation to make all or any portion of any Refinancing Loan) or by any Additional Lender (subject to Section 10.07(h)). The lenders providing the Refinancing Loans will be reasonably acceptable to the (i) Borrower and (ii) the Administrative Agent, only to the extent such Person otherwise would have a consent right to an assignment of such loans or commitments to such lender, such consent not to be unreasonably withheld, conditioned or delayed.

Section 2.15 Extensions of Loans.

(a) **Extension Offers.** Pursuant to one or more offers (each, an “**Extension Offer**”) made from time to time by the Borrower to all Lenders holding Loans and/or Commitments of a particular Class with a like Maturity Date, the Borrower may extend such Maturity Date and

otherwise modify the terms of such Loans and/or Commitments pursuant to the terms set forth in an Extension Offer (each, an “**Extension**”). Each Extension Offer will specify the minimum amount of Loans and/or Commitments with respect to which an Extension Offer may be accepted, which with respect to Loans or commitments denominated in Dollars, will be an integral multiple of \$1,000,000 and an aggregate principal amount that is not less than \$10,000,000, or, if less (i) the aggregate principal amount of such Class of Loans outstanding or (ii) such lesser minimum amount as is approved by the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed. Extension Offers will be made on a *pro rata* basis to all Lenders holding Loans and/or Commitments of a particular Class with a like Maturity Date. If the aggregate outstanding principal amount of such Loans (calculated on the face amount thereof) and/or Commitments in respect of which Lenders have accepted an Extension Offer exceeds the maximum aggregate principal amount of Loans and/or Commitments offered to be extended pursuant to such Extension Offer, then the Loans and/or Commitments of such Lenders will be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Lenders have accepted such Extension Offer. There is no requirement that any Extension Offer or Extension Amendment (defined as follows) be subject to any “most favored nation” pricing provisions. The terms of an Extension Offer shall be determined by the Borrower, and Extension Offers may contain one or more conditions to their effectiveness as determined by the Borrower, including a condition that a minimum amount of Loans and/or Commitments of any or all applicable tranches be tendered.

(b) **Extension Amendments.** The Lenders hereby irrevocably authorize the Administrative Agent to enter into amendments to this Agreement and the other Loan Documents (an “**Extension Amendment**”) as may be necessary, advisable or appropriate in order to establish new tranches in respect of Extended Loans and such amendments as permitted by **clause (c)** below as may be necessary, advisable or appropriate in the reasonable opinion of the Borrower, in consultation with the Administrative Agent, in connection with the establishment of such new tranches of Loans. This **Section 2.15** shall supersede any provisions in **Section 2.12** or **Section 10.01** to the contrary. Except as otherwise set forth in an Extension Offer, there will be no conditions to the effectiveness of an Extension Amendment. Extensions will not constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement.

(c) **Terms of Extension Offers and Extension Amendments.** The terms of any Extended Loans will be set forth in an Extension Offer and as agreed between the Borrower and the Extending Lenders accepting such Extension Offer; *provided* that:

- (i) the final maturity date of such Extended Loans will be no earlier than the Latest Maturity Date applicable to the Loans and/or Commitments subject to such Extension Offer;
- (ii) the Weighted Average Life to Maturity of any Extended Loans that are Term Loans will be no shorter than the remaining Weighted Average Life to Maturity of the Term Loans subject to such Extension Offer; and
- (iii) any Extended Loans that are Term Loans may participate on a *pro rata* basis or a less than *pro rata* basis (but not greater than a *pro rata* basis) in any corresponding mandatory repayments or prepayments of Term Loans other than any repayment of such

Extended Loans at maturity or with the proceeds of Credit Agreement Refinancing Indebtedness.

Any Extended Loans will constitute a separate tranche of Term Loans from the Term Loans held by Lenders that did not accept the applicable Extension Offer.

(d) **Required Consents.** No consent of any Lender or any other Person will be required to effectuate any Extension, other than the consent of the Administrative Agent (such consent not to be unreasonably withheld, delayed or conditioned), the Borrower and the applicable Extending Lender. The transactions contemplated by this **Section 2.15** (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Loans on such terms as may be set forth in the relevant Extension Offer) will not require the consent of any other Lender or any other Person, and the requirements of any provision of this Agreement or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this **Section 2.15** will not apply to any of the transactions effected pursuant to this **Section 2.15**.

Section 2.16 Defaulting Lenders.

(a) **Defaulting Lender Adjustments.** Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) **Defaulting Lender Waterfall.** Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to **Article VIII** or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to **Section 10.09** shall be applied at such time or times as may be determined by the Administrative Agent as follows:

first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *next*, as the Borrower may request (so long as no Event of Default shall have occurred and be continuing), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent;

next, if so determined by the Administrative Agent and the Borrower, to be held in a Cash Collateral Account and released *pro rata* in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement;

next, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *next*, so long as no Event of Default shall have occurred and be continuing, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and

next, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction;

provided that if (1) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (2) such Loans were made at a time when the conditions set forth in **Article IV** were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans funded are held by the Lenders pro rata in accordance with the applicable Commitments. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(b) **Defaulting Lender Cure.** If the Borrower and the Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans to be held pro rata by the Lenders in accordance with the applicable Commitments whereupon such Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; *provided further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

Section 2.17 Judgment Currency.

(a) If, for the purpose of obtaining judgment in any court, it is necessary to convert a sum owing hereunder or under any other Loan Document in one currency into another currency, each party hereto and each Loan Party (and by its acceptance of its appointment in such capacity, each Lead Arranger) agrees, to the fullest extent that it may effectively do so, that the rate of exchange used shall be that at which, in accordance with normal banking procedures in the relevant jurisdiction, the first currency could be purchased with such other currency on the Business Day immediately preceding the day on which final judgment is given.

(b) The obligations of the Loan Parties in respect of any sum due to any party hereto or under any other Loan Document or any holder of the obligations owing hereunder or under any other Loan Document (the “**Applicable Creditor**”) shall, notwithstanding any judgment in a currency (the “**Judgment Currency**”) other than the currency in which such sum is stated to be due hereunder (the “**Agreement Currency**”), be discharged only to the extent that, on the Business Day following receipt by the Applicable Creditor of any sum adjudged to be so due in the Judgment Currency, the Applicable Creditor may in accordance with normal banking procedures in the relevant jurisdiction purchase the Agreement Currency with the Judgment Currency; if the amount of the Agreement Currency so purchased is less than the sum originally due to the Applicable

Creditor in the Agreement Currency, the Borrower and each other Loan Party, as a separate obligation and notwithstanding any such judgment, agrees to indemnify the Applicable Creditor against such loss. The obligations of the Loan Parties contained in this Section shall survive the termination of this Agreement and the payment of all other amounts owing hereunder.

ARTICLE III.
TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY

Section 3.01 Taxes.

(a) Except as required by applicable Law, any and all payments by the Borrower or any Guarantor to or for the account of any Agent or any Lender under any Loan Document shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges imposed by any Governmental Authority, and all liabilities (including additions to tax, penalties and interest) with respect thereto (“**Taxes**”). The following shall be “**Excluded Taxes**” in the case of each Agent and each Lender,

(i) Taxes imposed on or measured by net income (however denominated, and including branch profits and similar Taxes), and franchise or similar Taxes, in each case, that are (A) imposed by the jurisdiction (or political subdivision thereof) under the laws of which it is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, or (B) Other Connection Taxes;

(ii) any U.S. federal Tax that is (or would be) required to be withheld with respect to amounts payable hereunder in respect of an Eligible Assignee (pursuant to an assignment under Section 10.07) on the date it becomes an assignee to the extent such Tax is in excess of the Tax that would have been applicable had such assigning Lender not assigned its interest arising under any Loan Document (unless such assignment is at the express written request of the Borrower);

(iii) U.S. federal withholding Taxes imposed on amounts payable to or for the account of a Lender or Agent with respect to an applicable interest in a Loan or Commitment pursuant to a Law in effect on the date on which (A) such Lender or Agent acquires such interest in the Loan or applicable Commitment or, to the extent a Lender acquires an interest in a Loan not funded pursuant to a prior Commitment, acquires such interest in such Loan (other than pursuant to an assignment request by the Borrower under Section 3.07) or (B) such Lender changes its Lending Office (other than at the written request of the Borrower to change such Lending Office), except in each case to the extent that pursuant to Section 3.01, amounts with respect to such Taxes were payable to such Lender’s or Agent’s assignor immediately before such Lender or Agent became a party hereto, or to such Lender immediately before it changed its Lending Office;

(iv) any Taxes imposed as a result of the failure of any Lender or Agent to comply with the provisions of Sections 3.01(b), 3.01(c) and 3.01(d) (in the case of any Foreign Lender, as defined below) or the provisions of Section 3.01(e) (in the case of any U.S. Lender, as defined below);

- (v) [reserved]; and
- (vi) any withholding Taxes imposed under FATCA.

If an applicable Withholding Agent is required to withhold or deduct any Taxes or Other Taxes (as defined below) from or in respect of any sum payable under any Loan Document to any Lender or Agent, (A) except in the case of Excluded Taxes, the sum payable shall be increased as necessary so that after making all required withholding or deductions (including withholding or deductions applicable to additional sums payable under this Section 3.01(a)), each of such Lender or Agent receives an amount equal to the sum it would have received had no such withholding or deductions been made, (B) the applicable Withholding Agent shall make such withholding or deductions, (C) the applicable Withholding Agent shall pay the full amount withheld or deducted to the relevant taxing authority, and (D) within thirty days after the date of any such payment by the Borrower or any Guarantor (or, if receipts or evidence are not available within thirty days, as soon as practicable thereafter), the Borrower or applicable Guarantor shall furnish to such Lender or Agent (as the case may be) the original or a facsimile copy of a receipt evidencing payment thereof to the extent such a receipt has been made available to the Borrower or applicable Guarantor (or other evidence of payment reasonably satisfactory to the Administrative Agent). If the Borrower or Guarantor fails to pay any Taxes or Other Taxes when due to the appropriate taxing authority, then the Borrower or applicable Guarantor shall indemnify such Lender or Agent for any incremental Taxes that may become payable by such Lender or Agent arising out of such failure.

(b) To the extent it is legally able to do so, each Lender or Agent (including an Eligible Assignee to which a Lender assigns its interest in accordance with Section 10.07, unless such Eligible Assignee is already a Lender hereunder) that is not a “**United States person**” within the meaning of Section 7701(a)(30) of the Code (each, a “**Foreign Lender**”) agrees to complete and deliver to the Borrower and the Administrative Agent on or prior to the date on which the Foreign Lender becomes a party hereto (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two accurate, complete and signed copies of whichever of the following is applicable: (i) IRS Form W-8BEN or Form W-8BEN-E certifying that it is entitled to benefits under an income tax treaty to which the United States is a party; (ii) IRS Form W-8ECI certifying that the income receivable pursuant to any Loan Document is effectively connected with the conduct of a trade or business in the United States; (iii) if the Foreign Lender is not (A) a bank described in Section 881(c)(3)(A) of the Code, (B) a 10-percent shareholder of the Borrower described in Section 871(h)(3)(B) of the Code, or (C) a controlled foreign corporation related to the Borrower within the meaning of Section 864(d)(4) of the Code, a certificate to that effect in substantially the form attached hereto as Exhibit G (a “**Non-Bank Certificate**”) and an IRS Form W-8BEN or Form W-8BEN-E, certifying that the Foreign Lender is not a United States person; (iv) to the extent a Foreign Lender is not the beneficial owner for U.S. federal income tax purposes, an IRS Form W-8IMY (or any successor forms) of the Foreign Lender, accompanied by, as and to the extent applicable, an IRS Form W-8BEN, Form W-8BEN-E, Form W-8ECI, Non-Bank Certificate, Form W-9, Form W-8IMY (or other successor forms) and any other required supporting information from each beneficial owner (it being understood that a Foreign Lender need not provide certificates or supporting documentation from beneficial owners if (A) the Foreign Lender is a “qualified intermediary” or “withholding foreign partnership” for U.S. federal income tax purposes and (B) such Foreign Lender is as a result able

to establish, and does establish, that payments to such Foreign Lender are, to the extent applicable, entitled to an exemption from or, if an exemption is not available, a reduction in the rate of, U.S. federal withholding Taxes without providing such certificates or supporting documentation); or (v) any other form prescribed by applicable requirements of U.S. federal income tax law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable requirements of law to permit the Borrower and the Administrative Agent to determine the withholding or deduction required to be made.

(c) In addition, each such Foreign Lender shall, to the extent it is legally entitled to do so, (i) promptly submit to the Borrower and the Administrative Agent two accurate, complete and signed copies of such other or additional forms or certificates (or such successor forms or certificates as shall be adopted from time to time by the relevant taxing authorities) as may then be applicable or available to secure an exemption from or reduction in the rate of U.S. federal withholding Tax (1) on or before the date that such Foreign Lender's most recently delivered form, certificate or other evidence expires or becomes obsolete or inaccurate in any material respect, (2) after the occurrence of a change in the Foreign Lender's circumstances requiring a change in the most recent form, certificate or evidence previously delivered by it to the Borrower and the Administrative Agent, and (3) from time to time thereafter if reasonably requested by the Borrower or the Administrative Agent, and (ii) promptly notify the Borrower and the Administrative Agent of any change in the Foreign Lender's circumstances that would modify or render invalid any claimed exemption or reduction. This Section 3.01(c) shall not apply to any reporting requirements under FATCA.

(d) If a payment made to a Lender under any Loan Document would be subject to Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by Law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine whether such Foreign Lender has complied with such Foreign Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 3.01(d), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(e) Each Lender or Agent that is a "**United States person**" (within the meaning of Section 7701(a)(30) of the Code) (each, a "**U.S. Lender**") agrees to complete and deliver to the Borrower and the Administrative Agent two copies of accurate, complete and signed IRS Form W-9 or successor form certifying that such U.S. Lender is not subject to U.S. federal backup withholding Tax (i) on or prior to the Closing Date (or on or prior to the date it becomes a party to this Agreement), (ii) on or before the date that such form expires or becomes obsolete or inaccurate in any material respect, (iii) after the occurrence of a change in the U.S. Lender's circumstances requiring a change in the most recent form previously delivered by it to the Borrower and the

Administrative Agent, and (iv) from time to time thereafter if reasonably requested by the Borrower or the Administrative Agent.

(f) The Borrower agrees to pay, without duplication of its obligations under Section Section 3.01(a), any and all present or future stamp, court or documentary Taxes and any other excise (in the nature of a documentary or similar Tax), property, intangible, filing or mortgage recording Taxes or charges or similar levies imposed by any Governmental Authority that arise from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document (including additions to Tax, penalties and interest related thereto) excluding, in each case, such amounts that are Other Connection Taxes imposed in connection with an Assignment and Assumption, grant of a participation, transfer or assignment to or designation of a new applicable Lending Office or other office for receiving payments under any Loan Document, except to the extent that any such change is requested in writing by the Borrower (all such non-excluded Taxes described in this Section 3.01(f) being hereinafter referred to as “**Other Taxes**”).

(g) If any Taxes or Other Taxes are directly asserted against any Lender or Agent with respect to any payment received by such Lender or Agent in respect of any Loan Document, such Lender or Agent may pay such Taxes or Other Taxes and, without duplication of its obligations under Section Section 3.01(a), the Borrower will promptly indemnify and hold harmless such Lender or Agent for the full amount of such Taxes (other than Excluded Taxes) and Other Taxes (and any Taxes (other than Excluded Taxes) and Other Taxes imposed on amounts payable under this Section 3.01), and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally imposed or asserted. Payments under this Section 3.01(g) shall be made within ten days after the date the Borrower receives written demand for payment from such Lender or Agent.

(h) Except as provided in Section 10.07(e), a Participant shall not be entitled to receive any greater payment under this Section 3.01 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant.

(i) If any Lender or Agent determines, in its sole discretion, exercised in good faith, that it has received a refund in respect of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or any Guarantor, as the case may be, or with respect to which the Borrower or any Guarantor, as the case may be, has paid additional amounts pursuant to this Section 3.01, it shall promptly pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower or any Guarantor under this Section 3.01 with respect to the Taxes or Other Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses (including Taxes) incurred by such Lender or Agent and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), *provided* that the Borrower or applicable Guarantor, as the case may be, upon the request of such Lender or Agent, agrees to repay the amount paid over to the Borrower or applicable Guarantor, as the case may be (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) to such Lender or Agent in the event such Lender or Agent is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 3.01(i), in no event will such Lender or Agent be required to pay any amount to the Borrower or applicable Guarantor pursuant to this Section 3.01(i) the payment of

which would place such Lender or Agent in a less favorable net after-Tax position than the indemnified party would have been in if the Tax or Other Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax or Other Tax had never been paid. Such Lender or Agent, as the case may be, shall provide the Borrower upon request with a copy of any notice of assessment or other evidence reasonably available of the requirement to repay such refund received from the relevant Governmental Authority (*provided* that such Lender or Agent may delete any information therein that such Lender or Agent deems confidential or not relevant to such refund in its reasonable discretion). This subsection shall not be construed to require any Lender or Agent to make available its tax returns (or any other information relating to its Taxes that it reasonably deems confidential) to the Borrower, any Guarantor or any other Person.

(j) Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 3.01(a) or (g) with respect to such Lender, it will, if requested by the Borrower in writing, use commercially reasonable efforts (subject to legal and regulatory restrictions) to mitigate the effect of any such event, including by designating another Lending Office for any Loan affected by such event and by completing and delivering or filing any Tax-related forms that such Lender is legally able to deliver and that would reduce or eliminate any amount of Taxes or Other Taxes required to be deducted or withheld or paid by the Borrower; *provided* that such efforts are made at the Borrower's expense and are on terms that, in the reasonable judgment of such Lender, do not cause such Lender or any of its Lending Offices to suffer any economic, legal or regulatory disadvantage, and *provided further* that nothing in this Section 3.01(j) shall affect or postpone any of the Obligations of the Borrower or the rights of such Lender pursuant to Section 3.01(a) or (g).

(k) Notwithstanding any other provision of this Agreement, the Borrower and the Administrative Agent may deduct and withhold any Taxes required by any Laws (including, for the avoidance of doubt, FATCA) to be deducted and withheld from any payment under any of the Loan Documents, subject to the provisions of this Section 3.01.

(l) Each Agent or Lender, as applicable, shall severally indemnify the Administrative Agent, within ten days after demand therefor, for (i) any Taxes attributable to such Agent or Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.07(e) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Agent or Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Agent or Lender by the Administrative Agent shall be conclusive absent manifest error. Each Agent and Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Agent or Lender under any Loan Document or otherwise payable by the Administrative Agent to such Agent or Lender from any other source against any amount due to the Administrative Agent under this Section 3.01(l).

(m) Each Lender authorizes the Administrative Agent to deliver to the Borrower and to any successor Administrative Agent any documentation provided by the Lender to the Administrative Agent pursuant to paragraph (b), (c), (d), or (e) of this Section 3.01.

(n) The agreements in this Section 3.01 shall survive the resignation or replacement of the Administrative Agent, termination of this Agreement and the payment of the Loans and all other amounts payable hereunder and any assignment of rights by, or replacement of, any Lender.

Section 3.02 Illegality. If any Lender reasonably determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Term Benchmark, or to determine or charge interest rates based upon the Term Benchmark, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars or any Alternative Currency in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) with respect to any Loans denominated in Dollars, any obligation of such Lender to make or continue Term Benchmark Loans or to convert Base Rate Loans to Term Benchmark Loans, shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Adjusted Term SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Adjusted Term SOFR component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice,

(A) with respect to Borrowings denominated in Dollars, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Term Benchmark Loans and shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Term Benchmark Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Adjusted Term SOFR component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Term Benchmark Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Term Benchmark Loans,

(B) with respect to Borrowings denominated in an Alternative Currency, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of such Term Benchmark Loans and shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Term Benchmark Loans of such Lender to a Loan bearing interest at an alternative rate mutually acceptable to the Borrower and the applicable Lenders, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Term Benchmark Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Term Benchmark Loans; *provided, however*, that if the Borrower and the applicable Lenders cannot agree within a reasonable time on an alternative rate for such Loans, the Borrower may, at its discretion, either (x) prepay such Loans or (y) maintain such Loans

outstanding, in which case, the interest rate payable to the applicable Lender on such Loans will be the rate determined by the Administrative Agent as its cost of funds to fund a Borrowing of such Loans with maturities comparable to the Interest Period applicable thereto plus the Applicable Rate or

(C) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Adjusted Term SOFR component of the Base Rate with respect to any Base Rate Loans, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Adjusted Term SOFR component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon Adjusted Term SOFR.

Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

Section 3.03 Inability to Determine Rates.

If the Administrative Agent or the Required Lenders reasonably determine that for any reason in connection with any request for a Term Benchmark Loan or a conversion to or continuation thereof that

(a) deposits are not being offered to banks in the relevant market for the applicable amount and Interest Period of such Term Benchmark Loan,

(b) adequate and reasonable means do not exist for determining the Term Benchmark for any requested Interest Period with respect to a proposed Term Benchmark Loan or in connection with an existing or proposed Base Rate Loan (in each case with respect to clauses (a) and (b), “**Impacted Loans**”) or

(c) Term Benchmark for any requested Interest Period with respect to a proposed Term Benchmark Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan,

the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (i) the obligation of the Lenders to make or maintain such Term Benchmark Loans shall be suspended, and (ii) in the event of a determination described in the preceding sentence with respect to the Adjusted Term SOFR component of the Base Rate, the utilization of the Adjusted Term SOFR component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, (i) with respect to Borrowings denominated in Dollars, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Term Benchmark Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein or (ii) with respect to Borrowings denominated in an Alternative Currency, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Term Benchmark Loans and shall convert all such Term Benchmark Loans of such Lender to a Loan bearing interest at an alternative rate mutually acceptable to the Borrower and the applicable Lenders; *provided however*, that if the Borrower

and the applicable Lenders cannot agree within a reasonable time on an alternative rate for such Loans, the Borrower may, at its discretion, either (A) prepay such Loans or (B) maintain such Loans outstanding, in which case, the interest rate payable to the applicable Lender on such Loans will be the rate determined by the Administrative Agent as its cost of funds to fund a Borrowing of such Loans with maturities comparable to the Interest Period applicable thereto *plus* the Applicable Rate.

Notwithstanding the foregoing, if the Administrative Agent has made the determination described in **clause (a)** or **(b)** of the foregoing paragraph, the Administrative Agent, in consultation with the Borrower, may establish an alternative interest rate for such Loans, in which case, such alternative rate of interest shall apply with respect to such Loans until

(i) the Administrative Agent revokes the notice delivered with respect to such Loans under **clauses (a)** or **(b)** of the first sentence of the foregoing paragraph,

(ii) the Administrative Agent or the Required Lenders notify the Administrative Agent and the Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or

(iii) any Lender determines that any law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof.

Section 3.04 Increased Cost and Reduced Return; Capital Adequacy.

(a) **Increased Costs Generally.** If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(ii) subject any Lender or Agent to any tax of any kind whatsoever with respect to this Agreement, any Loans or Commitments made by it, or change the basis of taxation of payments to such Lender or Agent, as applicable, in respect thereof (except, in each case, for (A) Taxes with respect to which the Borrower is obligated to pay additional amounts or indemnity payments pursuant to Section 3.01, (B) any Taxes and other amounts described in clauses (ii) through (iv) of the second sentence of Section 3.01(a) that are imposed with respect to payments to or for the account of any Lender or Agent under any Loan Document, (C) Connection Income Taxes, and (D) Other Taxes); or

(iii) impose on any Lender any other condition, cost or expense affecting this Agreement or Term Benchmark Loans made by such Lender (other than with respect to Taxes) that is not otherwise accounted for in the definition of “Term Benchmark” or this clause (a);

and the result of any of the foregoing shall be to increase the cost to such Lender or Agent of making or maintaining any Loan the interest on which is determined by reference to Term Benchmark or, in the case of a Change in Law with respect to Taxes, making or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender or Agent (whether of principal, interest, or any other amount), then, from time to time within ten days after demand by such Lender or Agent setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent) (*provided* that such calculation will not in any way require disclosure of confidential or price-sensitive information or any other information the disclosure of which is prohibited by law), the Borrower will pay to such Lender or Agent such additional amount or amounts as will compensate such Lender or Agent for such additional costs incurred or reduction suffered. No Lender shall request that the Borrower pay any additional amount pursuant to this Section 3.04(a) unless it shall concurrently make similar requests to other borrowers similarly situated and affected by such Change in Law and from whom such Lender is entitled to seek similar amounts.

(b) **Capital Requirements.** If any Lender reasonably determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding liquidity or capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by it to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to liquidity or capital adequacy), then from time to time upon demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such demand to the Administrative Agent) (*provided* that such calculation will not in any way require disclosure of confidential or price-sensitive information or any other information the disclosure of which is prohibited by law), the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) **Certificates for Reimbursement.** A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section 3.04 and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender, as the case may be, the amount shown as due on any such certificate within ten days after receipt thereof.

(d) **Delay in Requests.** Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of such Lender's right to demand such compensation, *provided* that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section 3.04 for any increased costs incurred or reductions suffered more than one hundred and eighty days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

(e) **[Reserved]**

Section 3.05 Funding Losses. Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, which demand shall set forth in reasonable detail the basis for requesting such amount (*provided* that such calculation will not in any way require disclosure of confidential or price-sensitive information or any other information the disclosure of which is prohibited by law), the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost, liability or expense (excluding loss of anticipated profits or margin) actually incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day prior to the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or

(c) any assignment of a Term Benchmark Loan on a day prior to the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 3.07;

including any loss or expense (excluding loss of anticipated profits or margin) actually incurred by reason of the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. Notwithstanding the foregoing, no Lender may make any demand under this Section 3.05 (i) with respect to the Floor or (ii) in connection with any prepayment of interest on Term Loans.

Section 3.06 Matters Applicable to All Requests for Compensation.

(a) **Designation of a Different Lending Office.** If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material economic, legal or regulatory respect.

(b) **Suspension of Lender Obligations.** If any Lender requests compensation by the Borrower under Section 3.04, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue Term Benchmark Loans from one Interest Period to another Interest Period, or to convert Base Rate Loans into Term Benchmark Loans, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.06(c) shall be applicable); *provided* that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(c) **Conversion of Term Benchmark Loans.** If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to the conversion of such Lender's Term Benchmark Loans no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Term Benchmark Loans made by other Lenders are outstanding, such Lender's Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Term Benchmark Loans, to the extent necessary so that, after giving effect thereto, all Loans of a given Class held by the Lenders of such Class holding Term Benchmark Loans and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Pro Rata Shares.

Section 3.07 Replacement of Lenders Under Certain Circumstances.

If

(i) any Lender requests compensation under Section 3.04 or ceases to make Term Benchmark Loans as a result of any condition described in Section 3.02 or Section 3.04,

(ii) the Borrower is required to pay any Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 and such Lender has declined or is unable to designate a different Lending Office in accordance with Section 3.01(j),

(iii) any Lender is a Non-Consenting Lender,

(iv) any Lender does not accept an Extension Offer,

(v) (A) any Lender shall become and continue to be a Defaulting Lender and

(B) such Defaulting Lender shall fail to cure the default pursuant to Section 2.16(b) within five Business Days after the Borrower's request that it cure such default or

(vi) any other circumstance exists hereunder that gives the Borrower the right to replace a Lender (other than a Disqualified Lender or Net Short Lender) as a party hereto,

then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.07), all of its interests, rights and obligations under this Agreement and the related Loan Documents (other than its existing rights to payments pursuant to Section 3.01 or 3.04) to one or more Eligible Assignees that shall assume such obligations (any of which assignee may be another Lender, if a Lender accepts such assignment), *provided* that:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.07(b)(iv);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts payable under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) such Lender being replaced pursuant to this Section 3.07 shall (i) execute and deliver an Assignment and Assumption with respect to such Lender's Commitment and outstanding Loans, and (ii) deliver any Notes evidencing such Loans to the Borrower or Administrative Agent (or a lost or destroyed note indemnity in lieu thereof); *provided* that the failure of any such Lender to execute an Assignment and Assumption or deliver such Notes shall not render such sale and purchase (and the corresponding assignment) invalid and such assignment shall be recorded in the Register and the Notes shall be deemed to be canceled upon such failure;

(d) the Eligible Assignee shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender;

(e) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(f) in the case of any such assignment resulting from a Lender being a Non-Consenting Lender, the Eligible Assignee shall consent, at the time of such assignment, to each matter in respect of which such Lender being replaced was a Non-Consenting Lender; and

(g) such assignment does not conflict with applicable Laws.

Notwithstanding anything to the contrary contained above, the Lender that acts as the Administrative Agent may not be replaced hereunder except in accordance with the terms of Section 9.09.

In the event that

(i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto,

(ii) the consent, waiver or amendment in question requires the agreement of each Lender, all affected Lenders or all the Lenders or all affected Lenders with respect to a certain Class or Classes of the Loans and

(iii) the Required Lenders or Required Facility Lenders, as applicable, have agreed to such consent, waiver or amendment,

then any Lender who does not agree to such consent, waiver or amendment shall be deemed a **“Non-Consenting Lender.”**

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 3.08 Survival. All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder and resignation of the Administrative Agent or the Collateral Agent.

ARTICLE IV. CONDITIONS PRECEDENT TO BORROWINGS

Section 4.01 Conditions to Initial Borrowing.

The obligation of each Lender to extend credit to Borrower on the Closing Date is subject only to the satisfaction, or waiver in accordance with Section 10.01, of each of the following conditions precedent, except as otherwise agreed between the Borrower and the Required Lenders:

(a) The Administrative Agent's receipt of the following, each of which may be originals, facsimiles or copies in .pdf format, unless otherwise specified:

(i) a Committed Loan Notice duly executed by the Borrower delivered as set forth in Section 2.01(b), which (if delivered prior to the Closing Date) shall be deemed to be conditioned on the consummation of the Transactions;

(ii) this Agreement duly executed by each Loan Party;

(iii) the Guaranty and the Security Agreement, in each case, duly executed by each applicable Loan Party;

(iv) certificates, if any, representing the Pledged Equity of the Borrower and the Restricted Subsidiaries that constitute Collateral, in each case, (A) to the extent the issuer of such certificate is a corporation or has "opted into" Article 8 of the UCC and (B) accompanied by undated stock powers executed in blank and evidence that all other actions required under the terms of the Security Agreement to perfect the security interests created by the Security Agreement have been taken except as specified in Section 6.15 hereof and the Security Agreement; *provided, however*, that, each of the foregoing requirements, including the delivery of documents and instruments required pursuant to the terms of the Collateral Documents (other than to the extent that a Lien on such Collateral may be perfected (x) by the filing of a financing statement or financing change statement under the Uniform Commercial Code or (y) by the delivery of stock certificates of the Borrower and its Subsidiaries), shall not constitute conditions precedent to the Borrowing on the Closing Date after the Borrower's use of commercially reasonable efforts to provide such items on or prior to the Closing Date if the Borrower agrees to deliver, or cause to be delivered, such documents and instruments, or take or cause to be taken such other actions as may be required to perfect such security interests within ninety (90) days after the Closing Date (subject to extensions approved by the Administrative Agent in its reasonable discretion);

(v) (A) certificates of good standing, or its equivalent, from the secretary of state or other applicable office of the jurisdiction of organization or formation of the Borrower and each other Loan Party, (B) resolutions or other applicable action of the Borrower and each other Loan Party and (C) an incumbency certificate and/or other certificate of Responsible Officers of the Borrower and each other Loan Party, evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which it is a party or is to be a party on the Closing Date;

(vi) an opinion from the following special counsel to the Loan Parties (or certain of the Loan Parties): Gibson, Dunn & Crutcher LLP, with respect to matters of New York and certain aspects of Delaware law and California law;

(vii) a certificate from the chief financial officer or other officer with equivalent duties of the Borrower as to the Solvency (after giving effect to the Transactions on the Closing Date) of the Borrower substantially in the form attached hereto as Exhibit I;

(viii) a certificate from a Responsible Officer of the Borrower certifying as to the satisfaction of the conditions in clauses (f), (g) and (h) below;

(b) all fees and expenses required to be paid hereunder on the Closing Date and, with respect to expenses and legal fees, to the extent invoiced in reasonable detail at least two Business Days before the Closing Date (except as otherwise reasonably agreed to by the Borrower) shall have been paid in full, it being agreed that such fees and expenses may be paid with the proceeds of the initial funding of one or more of the Facilities;

(c) the (i) Loan Documents and (ii) the ABL Loan Documents, required to be executed on the Closing Date shall have been duly executed and delivered by each Loan Party thereto;

(d) the Lenders shall have received at least three Business Days prior to the Closing Date (i) all documentation and other information about the Loan Parties required under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act, and (ii) to the extent the Borrower qualifies as a “legal entity customer” a Beneficial Ownership Certification, that in each case has been requested in writing at least ten Business Days prior to the Closing Date;

(e) confirmation from the Borrower (in the form of an officer’s certificate) that prior to or substantially simultaneously with the initial Borrowing on the Closing Date, the Closing Date Refinancing shall have been or will be consummated;

(f) on the Closing Date, no Default or Event of Default shall exist, or would result from the proposed Borrowing or from the application of the proceeds therefrom on the Closing Date.

(g) since February 1, 2020, there has been no event or circumstance, either individually or in the aggregate, that has resulted in, or is reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect;

(h) the representations and warranties of the Loan Parties contained in Article V or any other Loan Document shall be true and correct in all material respects on and as of the Closing Date; *provided* that to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; *provided further* that any representation and warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates; and

(i) the Lead Arrangers shall have received the Annual Financial Statements; *provided* that the Lead Arrangers hereby acknowledge receipt of the foregoing Annual Financial Statements.

Without limiting the generality of the provisions of the last paragraph of **Section 10.01**, for purposes of determining compliance with the conditions specified in this **Section 4.01**, each Lender that has signed this Agreement or funded Loans hereunder shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required under this **Section 4.01** to be consented to or approved by or acceptable or satisfactory to a Lender, unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 4.02 Conditions to Extensions after the Closing Date. The obligation of each Lender to extend credit to Borrower (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, a continuation of Eurodollar Rate Loans or a Borrowing pursuant to any Incremental Amendment) after the Closing Date is subject only to the satisfaction, or waiver in accordance with Section 10.01, of each of the following conditions precedent:

(a) the representations and warranties of the Loan Parties contained in Article V or any other Loan Document (except with respect to a Limited Condition Acquisition, in such case only the Specified Representations) shall be true and correct in all material respects on and as of the date of such Extension; *provided* that to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; *provided further* that any representation and warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates;

(b) no Default or Event of Default shall exist, or would result from such proposed Borrowing or from the application of the proceeds therefrom; and

(c) the Administrative Agent shall have received a Committed Loan Notice duly executed by the Borrower delivered as set forth in Section 2.01(b).

Without limiting the generality of the provisions of the last paragraph of **Section 10.01**, for purposes of determining compliance with the conditions specified in this **Sections 4.02**, each Lender that has signed this Agreement (and/or Assignment and Assumption) shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the date of the proposed borrowing, specifying its objection thereto in writing.

ARTICLE V.
REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants each of the following to the Lenders, the Administrative Agent and the Collateral Agent, in each case, to the extent and, unless otherwise specifically agreed by the Borrower, only on the dates required by **Section 2.13** or **Article IV**, as applicable.

Section 5.01 Existence, Qualification and Power; Compliance with Laws. Each Loan Party and each Restricted Subsidiary that is a Material Subsidiary,

- (a) is duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization (to the extent such concepts exist in such jurisdiction);
- (b) has all corporate or other organizational power and authority to (i) own its assets and carry on its business as currently conducted and (ii) in the case of the Loan Parties, execute, deliver and perform its obligations under the Loan Documents to which it is a party and consummate the Transactions;
- (c) is duly qualified and in good standing (to the extent such concepts exist in such jurisdiction) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification;
- (d) is in compliance with all applicable Laws; and
- (e) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted;
- (f) except in each case referred to in clauses (c), (d) or (e), to the extent that failure to do so has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.02 Authorization; No Contravention.

- (a) The execution, delivery and performance by each Loan Party of each Loan Document to which it is a party has been duly authorized by all necessary corporate or other organizational action.
- (b) None of the execution, delivery or performance by each Loan Party of each Loan Document to which it is a party nor the consummation of the Transactions will,
 - (i) contravene the terms of any of its Organization Documents;
 - (ii) result in any breach or contravention of, or the creation of any Lien (other than a Permitted Lien) upon any assets of such Loan Party or any Restricted Subsidiary, under (A) any Contractual Obligation relating to Material Indebtedness or (B) any order,

injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property is subject;

(iii) violate any applicable Law; or

(iv) require any approval of stockholders, members or partners or any approval or consent of any Person under any Contractual Obligation relating to Material Indebtedness, except for such approvals or consents which will be obtained on or before the Closing Date;

except with respect to any breach, contravention or violation (but not creation of Liens) referred to in clauses (ii), (iii) and (iv), to the extent that such breach, contravention or violation has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.03 Governmental Authorization. No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by any Loan Party of this Agreement or any other Loan Document, except for,

(a) filings necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties;

(b) the approvals, consents, exemptions, authorizations, actions, notices and filings that have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given or made or in full force and effect pursuant to the Collateral Documents); and

(c) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.04 Binding Effect. This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is party hereto and thereto. This Agreement and each other Loan Document constitutes a legal, valid and binding obligation of each Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except as such enforceability may be limited by applicable Debtor Relief Laws and by general principles of equity and principles of good faith and fair dealing.

Section 5.05 Financial Statements; No Material Adverse Effect.

(a) The Annual Financial Statements fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP (as in effect on the Closing Date (or the date of preparation)) consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein.

(b) Since February 1, 2020, there has been no event or circumstance, either individually or in the aggregate, that has resulted in, and is reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

(c) The forecasts of consolidated balance sheets and statements of comprehensive income (loss) of the Borrower and its Subsidiaries which have been furnished to the Administrative Agent prior to the Closing Date, when taken as a whole, have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time made and at the time the forecasts are delivered, it being understood that (i) no forecasts are to be viewed as facts, (ii) any forecasts are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties or any Sponsor, (iii) no assurance can be given that any particular forecasts will be realized and (iv) actual results may differ and such differences may be material.

Section 5.06 Litigation. Except as set forth in Schedule 5.06, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, overtly threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of the Restricted Subsidiaries that has resulted in, or is reasonably expected, individually or in the aggregate, to result in Material Adverse Effect.

Section 5.07 [Reserved].

Section 5.08 Ownership of Property; Liens; Insurance. Each Loan Party and each Restricted Subsidiary has good and valid record title in fee simple to, or valid leasehold interests in, or easements or other limited property interests in, all real property necessary in the ordinary conduct of its business, free and clear of all Liens except for Permitted Liens and except where the failure to have such title or other interest has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect. The properties of each Loan Party and each Restricted Subsidiary are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or the applicable Restricted Subsidiary operates.

Section 5.09 Environmental Matters.

(a) Except as has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect, (i) the Loan Parties and the Restricted Subsidiaries are in compliance with all applicable Environmental Laws (including having obtained all Environmental Permits) and (ii) none of the Loan Parties or any of the Restricted Subsidiaries is subject to any pending, or to the knowledge of the Loan Parties, threatened Environmental Claim or any other Environmental Liability or is aware of any basis for any Environmental Liability.

(b) None of the Loan Parties or any of the Restricted Subsidiaries has used, released, treated, stored, transported or disposed of Hazardous Materials, at or from any currently or formerly owned or operated real estate or facility relating to its business, in a manner that has resulted in, or is reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.10 Taxes. Except as has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect, the Borrower and its Subsidiaries have (i) timely filed all foreign, U.S. federal and state and other tax returns and reports required to be filed, and (ii) timely paid all foreign, U.S. federal and state and other Taxes, assessments, fees and other governmental charges (including satisfying their withholding Tax obligations) levied or imposed on their properties, income or assets or otherwise due and payable, except those which are being contested in good faith by appropriate actions diligently conducted and for which adequate reserves have been provided in accordance with GAAP.

Section 5.11 ERISA Compliance.

(a) Except as set forth on Schedule 5.11(a) or has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state, provincial, territorial and foreign Laws.

(b) Except as set forth on Schedule 5.11(b) or, with respect to each of the below clauses of this Section 5.11(b), as has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in Material Adverse Effect,

(i) no ERISA Event has occurred or is reasonably expected to occur;

(ii) neither the Borrower, nor any Subsidiary Guarantor nor any of their respective ERISA Affiliates has engaged in a transaction that is subject to Sections 4069 or 4212(c) of ERISA; and

(iii) neither the Borrower, nor any Subsidiary Guarantor nor any ERISA Affiliate has been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is insolvent (within the meaning of Section 4245 of ERISA) or has been determined to be in “endangered” or “critical” status (within the meaning of Section 432 of the Code or Section 305 of ERISA) and no such Multiemployer Plan is expected to be insolvent or in endangered or critical status.

Section 5.12 Subsidiaries. As of the Closing Date, all of the outstanding Equity Interests in the Borrower and each Material Subsidiary have been validly issued and are fully paid and (if applicable) non-assessable, and all Equity Interests owned by the Borrower or any Subsidiary Guarantor in any of their respective direct Material Subsidiaries are owned free and clear of all Liens (other than Permitted Liens) of any Person. As of the Closing Date, Schedule 5.12 (i) sets forth the name and jurisdiction of each Subsidiary, (ii) sets forth the ownership interest of the Borrower and each Subsidiary in each Subsidiary, including the percentage of such ownership and (iii) identifies each Subsidiary that is a Subsidiary the Equity Interests of which are required to be pledged on the Closing Date pursuant to the Collateral Documents.

Section 5.13 Margin Regulations; Investment Company Act.

(a) As of the Closing Date, none of the Collateral is Margin Stock. No Loan Party is engaged nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock (within the meaning of Regulation U issued by the FRB), or

extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Borrowings will be used for any purpose that violates Regulation U.

(b) Neither the Borrower nor any Guarantor is an “investment company” under the Investment Company Act of 1940.

Section 5.14 Disclosure. As of the Closing Date, none of the written information and written data heretofore or contemporaneously furnished by or on behalf of any Loan Party or a Sponsor to any Agent or any Lender on or prior to the Closing Date in connection with the Transactions and the negotiation of this Agreement or delivered hereunder or any other Loan Document on or prior to the Closing Date, when taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make such written information and written data taken as a whole, in the light of the circumstances under which it was delivered, not materially misleading (after giving effect to all modifications and supplements to such written information and written data, in each case, furnished after the date on which such written information or such written data was originally delivered and prior to the Closing Date); it being understood that for purposes of this Section 5.14, such written information and written data shall not include projections, *pro forma* financial information, financial estimates, forecasts or other forward-looking information or information of a general economic or general industry nature or prepared by the Lead Arrangers.

Section 5.15 Intellectual Property; Licenses, Etc. The Borrower and the Restricted Subsidiaries own or have a valid right to use, all the Intellectual Property necessary for the operation of their respective businesses as currently conducted, except where the failure to have any such rights, has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect. To the knowledge of the Borrower, the operation of the respective businesses of the Borrower and the Restricted Subsidiaries as currently conducted does not infringe upon, misappropriate or violate any Intellectual Property rights held by any Person except for such infringements, misappropriations or violations that have not resulted in, or are not reasonably expected, individually or in the aggregate, to result in, a Material Adverse Effect. No claim or litigation regarding any Intellectual Property owned by the Borrower or any of the Restricted Subsidiaries is pending or, to the knowledge of the Borrower, threatened against the Borrower or any Restricted Subsidiary, that, has resulted in, or is reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.16 Solvency. On the Closing Date after giving effect to the Transactions, the Borrower and its Subsidiaries, on a consolidated basis, are Solvent.

Section 5.17 USA PATRIOT Act, FCPA and OFAC.

(a) To the extent applicable, each of the Loan Parties and the Restricted Subsidiaries is in compliance, in all material respects, with (a) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto and (b) the USA PATRIOT Act and other similar anti-money laundering rules and regulations.

(b) Each of the Loan Parties and the Restricted Subsidiaries, and their respective officers, directors and employees, and to the Borrower's knowledge, their respective agents, affiliates and representatives, have conducted their businesses in compliance in all material respects with the FCPA, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions. The Borrower will not directly, or to its knowledge indirectly, use the proceeds of the Loans in violation of the FCPA, the UK Bribery Act 2010 or other similar anti-corruption legislation in other jurisdictions.

(c) None of the Loan Parties or any of the Restricted Subsidiaries, nor, to the knowledge of the Borrower, any director, officer, agent, employee or Affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is, (a) the subject or target of any Sanctions, (b) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets, the Investment Ban List or any other Sanctions list, or (c) located, organized or resident in a Designated Jurisdiction. The Borrower will not directly, or to its knowledge indirectly, use the proceeds of the Loans or otherwise knowingly make available such proceeds to any Person, for the purpose of financing the activities of any Person that, at the time of such financing, is (a) the subject or target of any Sanctions, (b) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets, the Investment Ban List or any other Sanctions list, or (c) located, organized or resident in a Designated Jurisdiction.

Section 5.18 Collateral Documents. Except as otherwise contemplated hereby or under any other Loan Documents, the provisions of the Collateral Documents, together with such filings and other actions required to be taken hereby or by the applicable Collateral Documents or contemplated by the Collateral Documents (including the delivery to Collateral Agent of any Pledged Debt and any Pledged Equity required to be delivered pursuant to the applicable Collateral Documents), are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid and enforceable perfected Lien (subject to Permitted Liens) on all right, title and interest of the Borrower and the applicable Subsidiary Guarantors, respectively, in the Collateral described therein.

Section 5.19 Use of Proceeds. The Borrower has used the proceeds of the Loans only in compliance (and not in contravention of) applicable Laws and each Loan Document.

ARTICLE VI. AFFIRMATIVE COVENANTS

So long as the Termination Conditions have not been satisfied, the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02 and 6.03) cause each of the Restricted Subsidiaries to:

Section 6.01 Financial Statements. Deliver to the Administrative Agent for prompt further distribution by the Administrative Agent to each Lender each of the following:

(a) **Audited Annual Financial Statements.** Within the time period required by the SEC (or, in the event that the Borrower is no longer a public filer with the SEC, within one hundred and twenty (120) days after the end of each fiscal year of the Borrower), a consolidated balance

sheet of the Borrower and its Subsidiaries as at the end of each fiscal year, and the related consolidated statements of comprehensive income (loss), stockholders' equity and cash flows for such fiscal year together with related notes thereto, setting forth in each case in comparative form the figures for the previous fiscal year (if ending after the Closing Date), prepared in accordance with GAAP, audited and accompanied by a report and opinion of the Borrower's auditor on the Closing Date or any other accounting firm of nationally or regionally recognized standing or another accounting firm reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any explanatory statement as to the Borrower's ability to continue as a "going concern" or like qualification or exception (excluding any "emphasis of matter" paragraph), other than any such statement, qualification or exception resulting from or relating to (i) an actual or anticipated breach of a Financial Covenant, (ii) an upcoming maturity date, (iii) activities, operations, financial results or liabilities of any Person other than the Loan Parties and the Restricted Subsidiaries or (iv) changes in accounting principles or practices.

(b) **Quarterly Financial Statements.** Within the time period required by the SEC (or, in the event that the Borrower is no longer a public filer with the SEC, as soon as available, but in any event within sixty (60) days after the end of each of the first three fiscal quarter of each fiscal year of the Borrower) (i) a condensed consolidated balance sheet of the Borrower and its Subsidiaries as at the end of each of the first three fiscal quarters of each fiscal year, (ii) the related condensed consolidated statements of comprehensive income (loss) for such fiscal quarter and for the portion of the fiscal year then ended and (iii) the related condensed consolidated statement of cash flows for the portion of the fiscal year then ended, setting forth, in each case of clauses (ii) and (iii), in comparative form, the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, in each case if ended after the Closing Date, certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in material compliance with GAAP, subject to year-end adjustments and the absence of footnotes.

(c) **Lender Calls.** The Borrower shall conduct quarterly conference calls with management of the Borrower (which conference calls may be combined with any conference calls for the holders of the Borrower's securities) and the Lenders, and in each case, subject to the requirements of this covenant, to discuss the financial performance of the Borrower and its Restricted Subsidiaries for the most recently ended fiscal year or fiscal quarter, as the case may be, for which financial statements have been delivered pursuant to clauses (a) or (b) above.

(d) **Unrestricted Subsidiaries.** Simultaneously with the delivery of each set of consolidated financial statements referred to in Section 6.01(a) and Section 6.01(b) above, such information (which need not be audited or reviewed by the auditors) reasonably sufficient to identify the Indebtedness and Consolidated Adjusted EBITDA attributable to all Unrestricted Subsidiaries (if any).

Notwithstanding the foregoing, the obligations in paragraphs (a) and (b) of this Section 6.01 may be satisfied with respect to financial information of the Borrower and its Subsidiaries by furnishing the Borrower's Form 10-K or 10-Q, as applicable, filed with the SEC; *provided* that, to the extent such information is in lieu of information required to be provided under Section 6.01(a),

so long as a report and opinion of the Borrower's auditor is not included therein, such materials are accompanied by a report and opinion of the Borrower's auditor on the Closing Date, any other accounting firm of nationally or regionally recognized standing or another accounting firm reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any explanatory statement as to the Borrower's ability to continue as a "going concern" or like qualification or exception (excluding any "emphasis of matter" paragraph), other than any such statement, qualification or exception resulting from or relating to (i) an actual or anticipated breach of a Financial Covenant, (ii) an upcoming maturity date, (iii) activities, operations, financial results or liabilities of any Person other than the Loan Parties and the Restricted Subsidiaries or (iv) changes in accounting principles or practices. Any financial statements required to be delivered pursuant to this **Section 6.01** shall not be required to contain purchase accounting adjustments to the extent it is not practicable to include any such adjustments in such financial statements.

Section 6.02 Certificates; Other Information. Deliver to the Administrative Agent for prompt further distribution by the Administrative Agent to each Lender each of the following:

- (a) **Compliance Certificate.** No later than five Business Days after the delivery of the financial statements referred to in Sections 6.01(a) and 6.01(b), a duly completed Compliance Certificate.
- (b) **SEC Filings.** Promptly after the same are publicly available, copies of all annual, regular, periodic and special reports, proxy statements and registration statements which the Borrower or any Restricted Subsidiary files with the SEC (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statement on Form S-8), and in any case not otherwise required to be delivered to the Administrative Agent pursuant to any other clause of this **Section 6.02**; *provided* that notwithstanding the foregoing, the obligations in this **Section 6.02(b)** may be satisfied by causing such information to be publicly available on the SEC's EDGAR website or another publicly available reporting service.
- (c) **Information Regarding Collateral.** The Borrower agrees to notify the Collateral Agent within forty-five calendar days of such event of any change (or such later date as the Collateral Agent may agree in its reasonable discretion),
 - (i) in the legal name of any Loan Party or any Person required to be a Loan Party;
 - (ii) in the identity or type of organization of any Loan Party or any Person required to be a Loan Party;
 - (iii) in the jurisdiction of organization of any Loan Party or any Person required to be a Loan Party; or
 - (iv) in the location (within the meaning of Section 9-307 of the UCC) of any Loan Party or any Person required to be a Loan Party under the UCC.

(d) **Other Information.** Such additional information as may be reasonably requested by the Administrative Agent or any Lender through the Administrative Agent (i) for purposes of compliance with applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Beneficial Ownership Regulation and (ii) regarding the business, financial, legal or corporate affairs of the Borrower or any of its Restricted Subsidiaries.

Documents required to be delivered pursuant to Section 6.01 or Section 6.02 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto, on the Borrower’s website on the Internet at the website addresses listed on Schedule 10.02, or (ii) on which such documents are posted on the Borrower’s behalf on Merrill Datasite One, Intralinks/Intra Agency, Syndtrak or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that: other than with respect to documents that are filed with the SEC, the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Each Lender shall be solely responsible for timely accessing posted documents and maintaining its copies of such documents.

The Borrower hereby acknowledges that

(a) the Administrative Agent and/or the Lead Arrangers will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, “**Borrower Materials**”) by posting the Borrower Materials on Merrill Datasite One, Intralinks/Intra Agency, Syndtrak or another similar electronic system (the “**Platform**”) and

(b) certain of the Lenders may have personnel who do not wish to receive any information with respect to the Borrower or its Subsidiaries, or the respective securities of any of the foregoing, that is not Public-Side Information, and who may be engaged in investment and other market-related activities with respect to such Person’s securities.

The Borrower hereby agrees that

(i) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked “**PUBLIC**” which, at a minimum, shall mean that the word “**PUBLIC**” shall appear prominently on the first page thereof (and by doing so shall be deemed to have represented that such information contains only Public-Side Information);

(ii) by marking Borrower Materials “**PUBLIC,**” the Borrower shall be deemed to have authorized the Administrative Agent, the Lead Arrangers and the Lenders to treat such Borrower Materials as containing only Public-Side Information (*provided however*, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in **Section 10.08**);

(iii) all Borrower Materials marked “**PUBLIC**” are permitted to be made available through a portion of the Platform designated “**Public-Side Information**”; and

(iv) the Administrative Agent and/or the Lead Arrangers shall be entitled to treat any Borrower Materials that are not marked “**PUBLIC**” as being suitable only for posting on a portion of the Platform not designated “**Public-Side Information.**”

For the avoidance of doubt, the foregoing shall be subject to the provisions of **Section 10.08**.

Section 6.03 Notices. Promptly after a Responsible Officer obtains actual knowledge thereof, notify the Administrative Agent for prompt further notification by the Administrative Agent to each Lender of:

(a) the occurrence of any (i) Default or Event of Default or (ii) “Default” or “Event of Default” under and as defined in the ABL Credit Agreement; and

(b) (i) any dispute, litigation, investigation or proceeding between the Borrower or any Restricted Subsidiary and any arbitrator or Governmental Authority or

(ii) the filing or commencement of, or any material development in, any litigation or proceeding affecting the Borrower or any Restricted Subsidiary, or

(iii) the occurrence of any ERISA Event

that, in any such case referred to in **clause (i)** through **(iii)**, has resulted, or is reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Each notice pursuant to this **Section 6.03** shall be accompanied by a written statement of a Responsible Officer of the Borrower setting forth a summary description of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. For the avoidance of doubt, the foregoing shall be subject to the provisions of **Section 10.08**.

Section 6.04 Payment of Certain Taxes. Timely pay, discharge or otherwise satisfy, as the same shall become due and payable, all obligations and liabilities in respect of Taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, except, in each case, to the extent (a) any such Tax, assessment, charge or levy is being contested in good faith and by appropriate actions diligently conducted and for which appropriate reserves have been established in accordance with GAAP or (b) the failure to pay, discharge or otherwise satisfy the same has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 6.05 Preservation of Existence, Etc.

(a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its incorporation or organization, as applicable; and

(b) take all reasonable action to preserve, renew and keep in full force and effect those of its rights (including with respect to Intellectual Property), licenses, permits, privileges, and franchises, that are material to the conduct of the business of the Loan Parties taken as a whole;

except in the case of **clause (a)** or **(b)**, (i) in connection with a transaction permitted by the Loan Documents (including transactions permitted by **Section 7.04** or **Section 7.05**), (ii) with respect to any Immaterial Subsidiary, or (iii) except with respect to the Borrower's compliance with **clause (a)**, to the extent that failure to do so has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 6.06 Maintenance of Properties. Maintain, preserve and protect all of its material properties and equipment used in the operation of its business in good working order, repair and condition (ordinary wear and tear excepted and casualty or condemnation excepted), except to the extent the failure to do so has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 6.07 Maintenance of Insurance.

(a) Except when the failure to do so has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect, maintain or cause to be maintained with insurance companies that the Borrower believes (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage is placed or renewed or with a Captive Insurance Subsidiary, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and of such types and in such amounts (after giving effect to any self-insurance) as are customarily carried under similar circumstances by such other Persons, and furnish to the Administrative Agent, which, absent a continuing Event of Default, shall not be made more than once in any twelve month period, upon reasonable written request from the Administrative Agent, information presented in reasonable detail as to the insurance so carried.

(b) Subject to **Section 6.15**, each such policy of insurance shall as appropriate and is customary,

(i) name the Collateral Agent, on behalf of the Secured Parties, as an additional insured thereunder (with respect to liability insurance), or

(ii) to the extent covering Collateral in the case of property insurance, contain a loss payable clause or endorsement that names the Collateral Agent, on behalf of the Secured Parties, as the lenders' loss payee thereunder;

provided that

(A) absent a Specified Event of Default that is continuing, any proceeds of any such insurance shall be delivered by the insurer(s) to the Borrower or one of its Subsidiaries and may be applied in accordance with (or, if this Agreement does not provide for application of such proceeds, in a manner that is not prohibited by) this Agreement and

(B) this **Section 6.07(b)** shall not be applicable to

- (1) business interruption insurance, workers' compensation policies, employee liability policies or directors and officers policies,
- (2) policies to the extent the Collateral Agent cannot have an insurable interest therein or is unable to be named as an additional insured or lenders' loss payee thereunder or
- (3) the extent unavailable from the relevant insurer after the Borrower's use of its commercially reasonable efforts; *provided, further*, that no insurance shall be required in any jurisdiction outside of the United States.

Section 6.08 Compliance with Laws.

(a) Comply with the requirements of all Laws (including applicable ERISA-related laws and all Environmental Laws) and all orders, writs, injunctions and decrees of any Governmental Authority applicable to it or to its business or property, except to the extent the failure to comply therewith has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect and

(b) comply in all material respects with the requirements of the USA PATRIOT Act, FCPA, OFAC, UK Bribery Act of 2010 and other anti-terrorism, anti-corruption and anti-money laundering Laws; *provided* that the requirements set forth in this **Section 6.08**, as they pertain to compliance by any Foreign Subsidiary with the USA PATRIOT ACT, FCPA, OFAC and UK Bribery Act of 2010 are subject to and limited by any Law applicable to such Foreign Subsidiary in its relevant local jurisdiction.

Section 6.09 Books and Records. Maintain proper books of record and account in which entries that are full, true and correct in all material respects shall be made of all material financial transactions and material matters involving the assets and business of the Borrower or such Restricted Subsidiary, as the case may be (it being understood and agreed that Foreign Subsidiaries may maintain individual books and records in conformity with generally accepted accounting principles in their respective countries of organization or operations and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder), in each case, to the extent necessary to prepare the financial statements described in **Sections 6.01(a)** and **6.01(b)**.

Section 6.10 Inspection Rights. Permit representatives of the Administrative Agent and Required Lenders to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom and to discuss its affairs, finances and accounts with its directors, officers and independent public accountants (subject to such accountants' policies and procedures), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; *provided* that:

(a) excluding any such visits and inspections during the continuation of an Event of Default, only the Administrative Agent on behalf of the Lenders may exercise rights under this **Section 6.10** and the Administrative Agent shall not exercise such rights more often than two times

during any calendar year absent the continuation of an Event of Default and only one such time shall be at the Borrower's expense and

(b) when an Event of Default is continuing, the Administrative Agent or the Required Lenders (or any of their respective representatives) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice.

The Administrative Agent shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. For the avoidance of doubt, the foregoing shall be subject to the provisions of **Section 10.08**.

Section 6.11 Covenant to Guarantee Obligations and Give Security. At the Borrower's expense, subject to any applicable limitation in any Loan Document (including **Section 6.12**), take the following actions:

(a) within ninety days of the occurrence of any Grant Event (or such longer period as the Administrative Agent may agree in its reasonable discretion),

(i) cause the Restricted Subsidiary subject of the Grant Event to execute and deliver the Guaranty (or a joinder thereto), which may be accomplished by executing a Guaranty Supplement;

(ii) cause the Restricted Subsidiary subject of the Grant Event to execute and deliver the Security Agreement (or a supplement thereto) which may be accomplished by executing a Security Agreement Supplement;

(iii) cause the Restricted Subsidiary subject of the Grant Event to execute and deliver any applicable Intellectual Property Security Agreements with respect to its registered or applied for Intellectual Property constituting Collateral;

(iv) cause the Restricted Subsidiary subject of the Grant Event to execute and deliver an acknowledgement of the Closing Date ABL Intercreditor Agreement and any other applicable Intercreditor Agreement;

(v) cause the Restricted Subsidiary subject of the Grant Event (and any Loan Party of which such Restricted Subsidiary is a direct Subsidiary) to

(1) if such Restricted Subsidiary is a corporation or has "opted into" Article 8 of the Uniform Commercial Code, deliver any and all certificates representing its Equity Interests (to the extent certificated) that constitute Collateral and are required to be delivered pursuant to the Security Agreement accompanied by undated stock powers or other appropriate instruments of transfer executed in blank (or any other documents customary under local law),

(2) execute and deliver a counterparty signature page to the Global Intercompany Note (or a joinder thereto),

(3) deliver all instruments evidencing Indebtedness held by such Restricted Subsidiary that constitute Collateral and are required to be delivered pursuant to the Security Agreement endorsed in blank, to the Collateral Agent, and

(4) if such Restricted Subsidiary is a Foreign Subsidiary, deliver such additional security documents and enter into additional collateral arrangements in the jurisdiction of such Foreign Subsidiary reasonably satisfactory to the Administrative Agent;

(vi) upon the reasonable request of the Administrative Agent, take and cause the Restricted Subsidiary the subject of the Grant Event and each direct or indirect parent of such Restricted Subsidiary that is required to become a Subsidiary Guarantor pursuant to this Agreement that directly holds Equity Interests in such Restricted Subsidiary to take such customary actions as may be necessary in the reasonable opinion of the Administrative Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) perfected Liens (subject to Permitted Liens) in the Equity Interests of such Restricted Subsidiary and the personal property and fixtures of such Restricted Subsidiary to the extent required by the Loan Documents, enforceable against all third parties in accordance with their terms, except as such enforceability may be limited by applicable Debtor Relief Laws and by general principles of equity (regardless of whether enforcement is sought in equity or at law);

(vii) upon request of the Administrative Agent deliver to the Administrative Agent a signed copy of a customary opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties as to such matters set forth in this Section 6.11(a) as the Administrative Agent may reasonably request; *provided* that such matters are not inconsistent with those addressed in opinions delivered on the Closing Date or customary market practice;

provided that without limiting the obligations set forth above, the Administrative Agent and the Collateral Agent will consult in good faith with the Borrower to reduce any stamp, filing or similar taxes imposed as a result of the actions described in the foregoing provisions.

Section 6.12 Further Assurances. Subject to Section 6.11 and any applicable limitations in any Collateral Document, and in each case at the expense of the Borrower, promptly upon the reasonable request by the Administrative Agent or Collateral Agent (a) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent or Collateral Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Collateral Documents.

Notwithstanding anything to the contrary in any Loan Document, other than with respect to the Equity Interests and assets of any Foreign Subsidiary that becomes a Loan Party, neither the Borrower nor any Restricted Subsidiary will be required to, nor will the Administrative Agent or the Collateral Agent be authorized,

(a) to perfect security interests in the Collateral other than by,

(i) “all asset” filings pursuant to the Uniform Commercial Code in the office of the secretary of state (or similar central filing office) of the relevant state(s);

(ii) filings in (A) the United States Patent and Trademark Office with respect to any U.S. issued or applied for patents and registered or applied for trademarks and (B) the United States Copyright Office of the Library of Congress with respect to material copyright registrations, in the case of each of **clauses (A)** and **(B)**, constituting Collateral; and

(iii) delivery to the Administrative Agent or Collateral Agent (or a bailee of the Administrative Agent or Collateral Agent) to be held in its possession of all Collateral consisting of (A) certificates representing Pledged Equity and (B) promissory notes and other instruments constituting Collateral, in each case, in the manner provided in the Collateral Documents; *provided* that promissory notes and instruments having an aggregate principal amount equal to or less than the Materiality Threshold Amount need not be delivered to the Collateral Agent;

(b) except with respect to the Blocked Accounts (as defined under the ABL Credit Agreement), to enter into any control agreement, lockbox or similar arrangement with respect to any deposit account, securities account, commodities account or other bank account, or otherwise take or perfect a security interest with control;

(c) [reserved]; or

(d) to take any action with respect to perfecting a Lien with respect to letters of credit, letter of credit rights, commercial tort claims, chattel paper or assets subject to a certificate of title or similar statute (in each case, other than the filing of customary “all asset” UCC-1 financing statements) or to deliver landlord lien waivers, estoppels, bailee letters or collateral access letters, in each case, unless required by the terms of the Security Agreement or the relevant Collateral Document.

Further, the Loan Parties shall not be required to perform any periodic collateral reporting, if any, with any frequency greater than once per fiscal year (*provided* that this clause shall not limit the obligation of the Loan Parties to comply with **Section 6.02(c)** or **Section 6.11**).

Section 6.13 Designation of Subsidiaries. The Borrower may at any time designate any Restricted Subsidiary as an Unrestricted Subsidiary or designate (or re-designate, as the case may be) any Unrestricted Subsidiary as a Restricted Subsidiary; *provided* that:

(a) immediately before and after such designation (or re-designation), no Specified Event of Default shall have occurred and be continuing;

(b) the Investment resulting from the designation of such Restricted Subsidiary as an Unrestricted Subsidiary as described above is permitted by **Section 7.02**; and

(c) no Subsidiary may be designated as an Unrestricted Subsidiary unless it is also designated as an “unrestricted subsidiary” under the ABL Credit Agreement.

The designation of any Subsidiary as an Unrestricted Subsidiary shall constitute an Investment by the Borrower therein at the date of designation in an amount equal to the fair market value of the Borrower’s or its Restricted Subsidiary’s (as applicable) Investment(s) to date therein. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Indebtedness and Liens of such Subsidiary existing at such time and a return on any Investment by the Borrower in Unrestricted Subsidiaries pursuant to the preceding sentence in an amount equal to the fair market value at the date of such designation of the Borrower’s or its Restricted Subsidiary’s (as applicable) Investment in such Subsidiary. Except as set forth in this paragraph, no Investment will be deemed to exist or have been made, and no Indebtedness or Liens shall be deemed to have been incurred or exist, by virtue of a Subsidiary becoming an Excluded Subsidiary or an Excluded Subsidiary becoming a Restricted Subsidiary. For all purposes hereunder, the designation of a Subsidiary as an Unrestricted Subsidiary shall be deemed to constitute a concurrent designation of any Subsidiary of such Subsidiary as an Unrestricted Subsidiary.

Section 6.14 Maintenance of Ratings. Use commercially reasonable efforts to maintain (a) a public corporate credit rating or public corporate family rating, as applicable, from Moody’s and either S&P or Fitch, in each case, in respect of the Borrower (but not a specific rating), and (b) a public rating in respect of the Initial Term Loans from Moody’s and either S&P or Fitch (but not a specific rating).

Section 6.15 Post-Closing Matters. The Borrower will, and will cause each of its Restricted Subsidiaries to, take each of the actions set forth on Schedule 6.15 within the time period prescribed therefor on such schedule (as such time period may be extended by the Administrative Agent).

Section 6.16 Use of Proceeds. The proceeds of the Initial Term Loans will be used on the Closing Date to finance, in part, the Transactions.

Section 6.17 Change in Nature of Business. Engage only in material lines of business that are substantially consistent with those lines of business conducted by the Borrower and the Restricted Subsidiaries on the Closing Date and lines of business that are reasonably similar, corollary, ancillary, incidental, synergistic, complementary or related to, or a reasonable extension, development or expansion of, the businesses conducted or proposed to be conducted by the Borrower and the Restricted Subsidiaries on the Closing Date, in each case as determined by the Borrower in good faith.

ARTICLE VII. NEGATIVE COVENANTS

So long as the Termination Conditions are not satisfied, the Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to:

Section 7.01 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, that secures Indebtedness other than the following:

(a) Liens securing obligations in respect of Indebtedness incurred pursuant to **Section 7.03(a)**, including obligations under any Loan Document, Incremental Loans and Extended Loans;

(b) Liens securing obligations in respect of Indebtedness incurred pursuant to **Section 7.03(b)**, including obligations with respect to the ABL Credit Facility;

(c) Liens existing on the Closing Date (other than Liens incurred under **Sections 7.01(a)** and **7.01(b)**);

(d) Liens securing obligations in respect of Indebtedness permitted under **Section 7.03(d)**, including in respect to Attributable Indebtedness, Capitalized Lease Obligations, and Indebtedness financing the acquisition, construction, repair, replacement or improvement of fixed or capital assets; *provided* that

(i) such Liens attach concurrently with or within two hundred and seventy days after completion of the acquisition, construction, repair, replacement or improvement (as applicable) of the property subject to such Liens and

(ii) such Liens do not at any time extend to or cover any assets (except for additions and accessions to such assets, replacements and products thereof and customary security deposits) other than the assets subject to, or acquired, constructed, repaired, replaced or improved with the proceeds of such Indebtedness; *provided* that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender or its affiliates or branches;

(e) Liens in favor of a Loan Party securing Indebtedness permitted under **Section 7.03**;

(f) Liens securing

(i) Obligations in respect of any Secured Hedge Agreement,

(ii) obligations in respect of any Secured Hedge Agreement (as defined in the ABL Credit Agreement) and

(iii) other Indebtedness permitted by **Section 7.03(f)**;

(g) Liens on assets of Non-Loan Parties securing obligations of such Non-Loan Parties and Liens on Excluded Assets;

(h) Liens securing obligations in respect of Permitted Pari Passu Secured Refinancing Debt or Permitted Junior Secured Refinancing Debt and any Permitted Refinancing of any of the foregoing incurred pursuant to **Section 7.03(h)**;

(i) Liens securing obligations in respect of Incremental Equivalent Debt (with the lien priority permitted in such definition and other than to the extent such Indebtedness is only permitted to be incurred as unsecured Indebtedness);

(j) Liens securing obligations in respect of Permitted Ratio Debt (with the lien priority permitted in such definition and other than to the extent such Indebtedness is only permitted to be incurred as unsecured Indebtedness);

(k) Liens on property or assets contributed to capital of the Borrower or a Subsidiary Guarantor or received in exchange for Equity Interests of the Borrower made after the Closing Date solely to the extent Not Otherwise Applied;

(l) (i) Liens existing on property at the time of (and not in contemplation of) its acquisition or existing on the property of any Person or on Equity Interests of any Person, in each case, at the time such Person becomes (and not in contemplation of such Person becoming) a Restricted Subsidiary, in each case after the Closing Date; *provided* that

(A) such Lien does not extend to or cover any other assets or property (other than (1) after-acquired property covered by any applicable grant clause, (2) property that is affixed or incorporated into the property covered by such Lien and (3) proceeds and products of assets covered by such Liens),

(B) such Lien does not encumber any assets of the Borrower or its Restricted Subsidiaries other than the assets acquired in such transaction and

(C) the Indebtedness secured thereby is permitted under **Section 7.03**,

(ii) Liens on any cash earnest money deposits made by the Borrower or any of the Restricted Subsidiaries in connection with any letter of intent or purchase agreement relating to an Investment and

(iii) Liens incurred in connection with escrow arrangements or other agreements relating to an Acquisition Transaction or Investment permitted hereunder;

(m) Liens

(i) on cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to **Section 7.02** to be applied against the purchase price for such Investment or

(ii) consisting of an agreement to Dispose of any property in a Disposition, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(n) (i) pledges or deposits in the ordinary course of business in connection with workers' compensation, health, disability or employee benefits, unemployment insurance and other social security laws or similar legislation or regulation or other insurance-related obligations

(including in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) and

(ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any Restricted Subsidiaries;

(o) (i) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto and

(ii) Liens on cash securing obligations to insurance companies with respect to insurable liabilities incurred in the ordinary course of business;

(p) deposits to secure the performance of bids, trade contracts, governmental contracts and leases (other than Indebtedness for borrowed money), statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations) incurred in the ordinary course of business;

(q) Liens on the Securitization Assets arising in connection with a Qualified Securitization Financing;

(r) Liens in respect of the cash collateralization of letters of credit;

(s) Liens

(i) of a collection bank arising under Section 4-208 or 4-210 of the Uniform Commercial Code on the items in the course of collection,

(ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business and not for speculative purposes and

(iii) in favor of a banking or other financial institution arising as a matter of law encumbering deposits or other funds maintained with a financial institution (including the right of setoff) and that are within the general parameters customary in the banking industry;

(t) Liens securing Cash Management Obligations and Cash Management Obligations (as defined in the ABL Credit Agreement), in each case, as permitted by **Section 7.03**;

(u) Liens that are customary contractual rights of setoff

(i) relating to the establishment of depository relations with banks or other deposit-taking financial institutions in the ordinary course of business (and, for the avoidance of doubt, not given in connection with the issuance of Indebtedness),

(ii) relating to pooled deposit or sweep accounts of the Borrower or any of the Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business or

(iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any of the Restricted Subsidiaries in the ordinary course of business;

(v) statutory or common law Liens of landlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens, or other customary Liens (other than in respect of Indebtedness) in favor of landlords, so long as, in each case, such Liens arise in the ordinary course of business and secure amounts not overdue for a period of more than sixty days or, if more than sixty days overdue, are unfiled and no other action has been taken to enforce such Lien or that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(w) any interest or title of a lessor, sublessor, licensor or sublicensor or secured by a lessor's, sublessor's, licensor's or sublicensor's interest under leases or licenses entered into by the Borrower or any of the Restricted Subsidiaries as lessee or licensee in the ordinary course of business;

(x) ground leases in respect of real property on which facilities owned or leased by the Borrower or any of its Subsidiaries are located;

(y) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of the Borrower and the Restricted Subsidiaries, taken as a whole;

(z) deposits of cash with the owner or lessor of premises leased and operated by the Borrower or any of the Restricted Subsidiaries in the ordinary course of business to secure the performance of the Borrower's or a Restricted Subsidiary's obligations under the terms of the lease for such premises;

(aa) (i) Liens for taxes, assessments or governmental charges that are not overdue for a period of more than sixty days or that are being contested in good faith and by appropriate actions diligently conducted and for which appropriate reserves have been established in accordance with GAAP or that are not expected to result in a Material Adverse Effect and

(ii) Liens for property taxes on property the Borrower or its Subsidiaries has decided to abandon if the sole recourse for such tax, assessment or charge is to such property;

(bb) easements, rights-of-way, restrictions (including zoning restrictions), encroachments, protrusions and other similar encumbrances and title defects affecting real property that, in the aggregate, do not in any case materially interfere with the ordinary conduct of the business of the Borrower and the Restricted Subsidiaries taken as a whole, or the use of the property for its intended purpose;

(cc) Liens arising from judgments or orders for the payment of money not constituting an Event of Default under **Section 8.01(g)**;

(dd) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business (including any other agreement under which the Borrower or any Restricted Subsidiary has granted rights to end users to access and use the Borrower's or any Restricted Subsidiary's products, technologies, facilities or services) which do not interfere in any material respect with the business of the Borrower and the Restricted Subsidiaries, taken as a whole;

(ee) Liens

(i) in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business and

(ii) on specific items of inventory or other goods and proceeds thereof of any Person securing such Person's obligations in respect of bankers' acceptances or documentary letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or such other goods in the ordinary course of business;

(ff) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or any of the Restricted Subsidiaries in the ordinary course of business;

(gg) Liens imposed by law or incurred pursuant to customary reservations or retentions of title (including contractual Liens in favor of sellers and suppliers of goods) incurred in the ordinary course of business for sums not constituting borrowed money that are not overdue for a period of more than sixty days or that are being contested in good faith by appropriated proceedings and for which adequate reserves have been established in accordance with GAAP (if so required);

(hh) Liens deemed to exist in connection with Investments in repurchase agreements and reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts maintained in the ordinary course of business and not for speculative purposes;

(ii) Liens on cash and Cash Equivalents earmarked to be used to satisfy or discharge Indebtedness where such satisfaction or discharge of such Indebtedness is not otherwise prohibited by this Agreement;

(jj) purported Liens evidenced by the filing of precautionary Uniform Commercial Code financing statements or similar public filings;

(kk) the modification, replacement, renewal or extension of any Lien permitted by this **Section 7.01**; *provided* that

(i) the Lien does not extend to any additional property, other than (A) after-acquired property covered by any applicable grant clause, (B) property that is affixed

or incorporated into the property covered by such Lien and (C) proceeds and products of assets covered by such Liens, and

(ii) the renewal, extension or refinancing of the obligations secured or benefited by such Liens is permitted by **Section 7.03**;

(ll) Liens securing:

(i) a Permitted Refinancing of Indebtedness; *provided* that:

(a) such Indebtedness was permitted by **Section 7.03** and was secured by a Permitted Lien;

(b) such Permitted Refinancing is permitted by **Section 7.03**; and

(c) the Lien does not extend to any additional property, other than (A) after-acquired property covered by any applicable grant clause, (B) property that is affixed or incorporated into the property covered by such Lien and (C) proceeds and products of assets covered by such Liens; and

(ii) Guarantees permitted by **Section 7.03** to the extent that the underlying Indebtedness subject to such Guarantee is permitted to be secured by a Lien;

(mm) Liens securing Pari Passu Lien Debt and/or Junior Lien Debt; *provided* that:

(i) such Indebtedness is incurred pursuant to **clause (a)(i)** or **(a)(ii)** of the definition of “**Permitted Ratio Debt**”; and

(ii) such Liens (other than with respect to purchase money and similar obligations) are, in each case,

(x) to the extent such Indebtedness is required to be subject to the provisions of the Closing Date ABL Intercreditor Agreement, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to, or is otherwise subject to the provisions of the Closing Date ABL Intercreditor Agreement or any other intercreditor agreement that may be executed from time to time and reasonably acceptable to the Administrative Agent and

(y) subject to an Equal Priority Intercreditor Agreement or Junior Lien Intercreditor Agreement, as applicable;

(nn) Liens securing Indebtedness or other obligations in an aggregate principal amount as of the date such Indebtedness is incurred not to exceed the greater of (A) 50.00% of Closing Date EBITDA and (B) 50.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination, in each case, determined as of the date such Indebtedness is incurred (or commitments with respect thereto are received); *provided* that it is agreed that Liens incurred pursuant to this **clause (nn)** may be *pari passu* with the Liens securing the Facilities under this Agreement;

(oo) Liens in respect of the cash collateralization of corporate credit card programs; *provided* that the aggregate amount of such cash securing such obligations shall not exceed \$15,000,000;

(pp) Liens securing obligations in respect of Indebtedness incurred pursuant to **Section 7.03(k)**;
and

(qq) Liens securing obligations in respect of Indebtedness incurred pursuant to **Section 7.03(x)**.

For purposes of determining compliance with this **Section 7.01**, in the event that any Lien (or any portion thereof) meets the criteria of more than one of the categories set forth above, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Lien (or any portion thereof) in any manner that complies with this covenant on the date such Lien is incurred or such later time, as applicable; *provided* that all Liens securing Indebtedness under (a) the Loan Documents will be deemed to have been incurred in reliance on the exception in **Section 7.01(a)** and (b) the ABL Credit Agreement on the Closing Date will be deemed incurred in reliance on the exception in **Section 7.01(b)**, and shall not be permitted to be reclassified pursuant to this paragraph.

Any Lien incurred in compliance with this **Section 7.01** after the Closing Date that is intended to be secured on a *pari passu* basis with the Obligations will be subject to an Equal Priority Intercreditor Agreement, and any Lien incurred in compliance with this **Section 7.01** on or after the Closing Date that is intended by the Borrower to be secured on a contractually junior basis will be subject to a Junior Lien Intercreditor Agreement and all such Liens, to the extent required to be subject to the provisions of the Closing Date ABL Intercreditor Agreement, will be subject to the Closing Date ABL Intercreditor Agreement or any other intercreditor agreement that may be executed from time to time and reasonably acceptable to the Administrative Agent.

Section 7.02 **Investments**. Make or hold any Investments, except:

(a) Investments,

(i) by the Borrower or any Restricted Subsidiary in the Borrower or any Restricted Subsidiary; and

(ii) by the Borrower or any Restricted Subsidiary in a Person, if as a result of such Investment (A) such Person becomes a Restricted Subsidiary or (B) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Borrower or a Restricted Subsidiary;

(b) Investments existing on the Closing Date or made pursuant to legally binding written contracts in existence on the Closing Date and any modification, replacement, renewal, reinvestment or extension of any of the foregoing; *provided* that the amount of any Investment permitted pursuant to this **Section 7.02(b)** is not increased from the amount of such Investment on the Closing Date except pursuant to the terms of such Investment as of the Closing Date or as otherwise permitted by another clause of this **Section 7.02**;

(c) Permitted Acquisitions;

(d) Investments

(i) held by a Restricted Subsidiary acquired after the Closing Date or of a Person merged, amalgamated or consolidated with or into the Borrower or merged, amalgamated or consolidated with or into a Restricted Subsidiary (or committed to be made by any such Person) to the extent that, in each case, such Investments or any such commitments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation and

(ii) held by Persons that become Restricted Subsidiaries after the Closing Date, including Investments by Unrestricted Subsidiaries made or acquired (or committed to be made or acquired), to the extent that such Investments were not made or acquired (or committed to be made or acquired) in contemplation of, or in connection with, such Person becoming a Restricted Subsidiary or such designation as applicable;

(e) Investments in Similar Businesses that do not exceed in the aggregate the greater of (A) 25.00% of Closing Date EBITDA and (B) 25.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination; *provided* that if any Investment pursuant to this **clause (e)** is made in any Person that is not the Borrower or a Restricted Subsidiary on the date of such Investment (prior to giving effect thereto) and such Person subsequently becomes the Borrower or a Restricted Subsidiary, the Investment initially made in such Person pursuant to this **clause (e)** shall thereupon be deemed to have been made pursuant to **clause (a)(i)** hereof and to not have been made pursuant to this **clause (e)** for so long as such Person continues to be the Borrower or a Restricted Subsidiary;

(f) Investments in Unrestricted Subsidiaries in an aggregate amount which does not exceed the greater of (A) 25.00% of Closing Date EBITDA and (B) 25.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination; *provided* that, in the case of any such Investment, no Specified Event of Default has occurred or is continuing or would result therefrom;

(g) Investments to the extent that payment for such Investments is made solely with Qualified Equity Interests of the Borrower or the proceeds from the issuance thereof;

(h) Joint Venture Investments;

(i) [Reserved];

(j) loans or advances to any Company Person;

(i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes;

(ii) in connection with such Person's purchase of Equity Interests of the Borrower; *provided* that, to the extent such loans or advances are made in cash, the amount

of such loans and advances used to acquire such Equity Interests shall be contributed to the Borrower in cash; and

(iii) for any other purpose;

provided that either (A) no cash or Cash Equivalents are advanced in connection with such Investment or (B) the aggregate principal amount outstanding under this **clause (iii)(B)** shall not exceed the greater of (I) 10.00% of Closing Date EBITDA and (II) 10.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination;

(k) Investments in Hedge Agreements;

(l) promissory notes and other Investments received in connection with Dispositions or any other transfer of assets not constituting a Disposition;

(m) Investments in assets that are cash or Cash Equivalents or were Cash Equivalents when made;

(n) Investments consisting of extensions of trade credit or otherwise made in the ordinary course of business, including Investments consisting of endorsements for collection or deposit and trade arrangements with customers, vendors, suppliers, licensors and licensees;

(o) Investments consisting of Liens, Indebtedness (including Guarantees), fundamental changes, Dispositions and Restricted Payments permitted under **Sections 7.01, 7.03, 7.04** (other than **clause (f)** thereof), **7.05** (other than **clause (e)** thereof) and **7.06** (other than **clause (d)** hereof), respectively;

(p) Investments

(i) received in connection with the bankruptcy, workout, recapitalization or reorganization of, or in settlement of delinquent obligations of, or other disputes with, any other Person who is not an Affiliate of the Borrower,

(ii) received in connection with the foreclosure of any secured Investment or other transfer of title with respect to any secured Investment,

(iii) in satisfaction of judgments against other Persons who are not Affiliates of the Borrower,

(iv) as a result of the settlement, compromise or resolutions of litigation, arbitration or other disputes with Persons who are not Affiliates of the Borrower and

(v) received in satisfaction or partial satisfaction of trade credit and other credit extended in the ordinary course of business, including to vendors and suppliers;

(q) advances of payroll or other payments to any Company Person;

(r) Investments consisting of purchases and acquisitions of inventory, supplies, material, services or equipment or the licensing or contribution of Intellectual Property pursuant to joint marketing arrangements with other Persons;

(s) Investments made in connection with obtaining, maintaining or renewing client contracts and loans or advances made to distributors, vendors, suppliers, licensors and licensees;

(t) Guarantees of leases (other than Capitalized Leases) or of other obligations that do not constitute Indebtedness;

(u) Investments in connection with any Permitted Reorganization and the transactions relating thereto or contemplated thereby;

(v) Investments in connection with any deferred compensation plan or arrangement or other compensation plan or arrangement, including to a “rabbi” trust or to any grantor trust claims of creditors;

(w) in the event that the Borrower or any Restricted Subsidiary makes any Investment after the Closing Date in any Person that is not a Restricted Subsidiary and such Person subsequently becomes a Restricted Subsidiary, additional Investments in an amount equal to the fair market value of such Investment as of the date on which such Person becomes a Restricted Subsidiary to the extent Investment capacity is not otherwise increased hereunder by such Person becoming a Restricted Subsidiary (including by way of reclassification);

(x) any Investments held by or committed to by the Borrower or any Restricted Subsidiary on the Closing Date;

(y) unfunded pension fund and other employee benefit plan obligations and liabilities to the extent that such obligations and/or liabilities, as applicable, are permitted to remain unfunded under applicable law;

(z) Investments in connection with intercompany cash management services, treasury arrangements and any related activities;

(aa) Investments consisting of (i) the licensing or contribution of Intellectual Property pursuant to joint marketing, collaborations or other similar arrangements with other Persons and/or (ii) minority equity interests in customers received as part of fee arrangements or other commercial arrangements;

(bb) the conversion to Qualified Equity Interests of any Indebtedness owed by the Borrower or any Restricted Subsidiary;

(cc) (i) Investments in a Securitization Subsidiary or any Investment by a Securitization Subsidiary in any other Person in connection with a Qualified Securitization Financing; ***provided however***, that any such Investment in a Securitization Subsidiary is of Securitization Assets or equity, and

(ii) distributions or payments of Securitization Fees and purchases of Securitization Assets pursuant to a Securitization Repurchase Obligation in connection with a Qualified Securitization Financing;

(dd) Investments in any Captive Insurance Subsidiary in the ordinary course of business and consistent with market practice for Captive Insurance Subsidiaries of similar nature, size and type;

(ee) [reserved];

(ff) [reserved];

(gg) Investments; **provided** that the Total Net Leverage Ratio (after giving Pro Forma Effect to the incurrence of such Investment) for the Test Period immediately preceding the making of such Investment shall be less than or equal to the Closing Date Total Net Leverage Ratio less 0.25 to 1.00; **provided** that no Specified Event of Default has occurred or is continuing or would result therefrom;

(hh) Investments that do not exceed in the aggregate at any time outstanding the sum of:

(i) the Available Amount that is Not Otherwise Applied at such time; **provided** that no Event of Default shall have occurred and be continuing or would result therefrom; and

(ii) the greater of (A) 75.00% of Closing Date EBITDA and (B) 75.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination.

If any Investment is made in any Person that is not a Restricted Subsidiary on the date of such Investment and such Person subsequently becomes a Restricted Subsidiary, such Investment shall thereupon be deemed to have been made pursuant to **Section 7.02(a)(i)** and to not have been made pursuant to any other clause set forth above.

Notwithstanding anything to the contrary contained herein, in no event shall the Borrower or any Restricted Subsidiary (a) consummate any disposition of any material intellectual property to any Unrestricted Subsidiary, (b) contribute or otherwise make any Investment of any material intellectual property to or in any Unrestricted Subsidiary or (c) designate any Subsidiary as an Unrestricted Subsidiary if such Subsidiary owns any material intellectual property; provided that the foregoing clauses (a), (b) and (c) shall not apply to transactions that have a bona fide business purpose so long as such transactions are not undertaken to facilitate a financing (including a debtor in possession financing) or a Restricted Payment or undertaken in connection with a liability management transaction.

For purposes of determining compliance with this **Section 7.02**, in the event that any Investment (or any portion thereof) meets the criteria of more than one of the categories set forth above, the Borrower may, in its sole discretion, at the time such Investment is made, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Investment (or any

portion thereof) in any manner that complies with this covenant on the date such Investment is made or such later time, as applicable.

The amount of any Investment at any time shall be the amount of cash and the fair market value of other property actually invested (measured at the time made), without adjustment for subsequent changes in the value of such Investment at the Borrower's option, net of any return, whether a return of capital, interest, dividend or otherwise, with respect to such Investment. To the extent any Investment in any Person is made in compliance with this **Section 7.02** in reliance on a category above that is subject to a Dollar-denominated restriction on the making of Investments and, subsequently, such Person returns to the Borrower or any Restricted Subsidiary all or any portion of such Investment (in the form of a dividend, distribution, liquidation or otherwise, but excluding intercompany Indebtedness), such return shall be deemed to be credited to the Dollar-denominated category against which the Investment is then charged. To the extent the category subject to a Dollar-denominated restriction is also subject to a percentage of TTM Consolidated Adjusted EBITDA restriction which, at the date of determination, produces a numerical restriction that is greater than such Dollar Amount, then such Dollar equivalent shall be deemed to be substituted in lieu of the corresponding Dollar Amount in the foregoing sentence for purposes of determining such credit.

For purposes of determining compliance with any Dollar-denominated (or percentage of TTM Consolidated Adjusted EBITDA, if greater) restriction on the making of Investments, the Dollar equivalent amount of the Investment denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Investment was made.

Section 7.03 Indebtedness. Create, incur or assume any Indebtedness, other than:

- (a) Indebtedness under the Loan Documents (including Incremental Loans and Extended Loans);
- (b) Indebtedness in respect of
 - (i) [reserved];
 - (ii) (A) (i) Indebtedness incurred pursuant to the ABL Loan Documents in an aggregate principal amount not to exceed the greater of (x) \$715,000,000 and (y) the Borrowing Base, measured at the time of the incurrence of such Indebtedness, and (ii) Indebtedness supported by a Letter of Credit (as defined in the ABL Credit Agreement), in a principal amount not in excess of the stated amount of such Letter of Credit and
- (B) any Permitted Refinancing in respect of the foregoing **clause (A)**;
- (c) Indebtedness existing on the Closing Date (other than Indebtedness under the ABL Credit Agreement) and any Permitted Refinancing thereof, including any intercompany Indebtedness of the Borrower or any Restricted Subsidiary outstanding on the Closing Date;

- (d) (i) (A) Attributable Indebtedness relating to any transaction,
- (B) Capitalized Leases and other Indebtedness financing the acquisition, construction, repair, replacement or improvement of fixed or capital assets, whether through the direct purchase of assets or the Equity Interests of any Person owning such assets, so long as such Indebtedness is incurred concurrently with, or within two-hundred and seventy days after, the applicable acquisition, construction, repair, replacement or improvement and
- (C) Indebtedness arising from the conversion of obligations of the Borrower or any Restricted Subsidiary under or pursuant to any “synthetic lease” transactions to Indebtedness of the Borrower or such Restricted Subsidiary;

provided that the aggregate principal amount of such Indebtedness at the time any such Indebtedness is incurred pursuant to this **Section 7.03(d)** shall not exceed the greater of (I) 40.00% of Closing Date EBITDA and (II) 40.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination, in each case determined at the time of incurrence,

- (ii) Attributable Indebtedness incurred in connection with a Sale Leaseback Transaction otherwise permitted hereunder and
- (iii) any Permitted Refinancing of any Indebtedness incurred under this **Section 7.03(d)**;

provided that for the purposes of determining compliance with this **Section 7.03(d)**, any lease that is not treated under GAAP as a capital lease at the time such lease is executed but is subsequently treated under GAAP as a capitalized lease as the result of a change in GAAP (or interpretations thereof) after the Closing Date shall not be treated as Indebtedness;

(e) Indebtedness of the Borrower or any of the Restricted Subsidiaries owing to the Borrower or any other Restricted Subsidiary; *provided* that all such Indebtedness of any Loan Party owed to any Restricted Subsidiary that is not a Loan Party shall be subject to the Global Intercompany Note (but only to the extent permitted by applicable law);

- (f) Indebtedness in respect of
 - (i) Obligations under Secured Hedge Agreements,
 - (ii) obligations under Secured Hedge Agreements (as defined in the ABL Credit Agreement) and
 - (iii) Hedge Agreements designed to hedge against the Borrower’s or any Restricted Subsidiary’s exposure to interest rates, foreign exchange rates or commodities pricing risks,

in each case of **clauses (i)** through **(iii)**, incurred not for speculative purposes, and Guarantees thereof;

(g) (i) Indebtedness incurred by a Non-Loan Party in an aggregate amount which does not exceed the greater of (A) 30.00% of Closing Date EBITDA and (B) 30.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination and

(ii) Indebtedness that is recourse only to Excluded Assets in an aggregate amount which does not exceed the fair market value of such Excluded Assets at the time such Indebtedness is incurred;

(h) Credit Agreement Refinancing Indebtedness and any Permitted Refinancing thereof;

(i) Incremental Equivalent Debt and any Permitted Refinancing thereof;

(j) Permitted Ratio Debt and any Permitted Refinancing thereof;

(k) Contribution Indebtedness and any Permitted Refinancing thereof;

(l) Indebtedness,

(i) of any Person that becomes a Restricted Subsidiary after the Closing Date pursuant to an Investment or other Acquisition Transaction permitted hereunder, which Indebtedness is existing at the time such Person becomes a Restricted Subsidiary and is not incurred in contemplation of such Person becoming a Restricted Subsidiary that is non-recourse to (and is not assumed by any of) the Borrower or any Restricted Subsidiary (other than any Subsidiary of such Person that is a Subsidiary on the date such Person becomes a Restricted Subsidiary after the Closing Date) and is either (A) unsecured or (B) secured only by the assets of such Restricted Subsidiary by Liens permitted under **Section 7.01**;

(ii) any Permitted Refinancing of the foregoing;

(m) Indebtedness incurred in connection with a Permitted Acquisition, Acquisition Transaction or Investment expressly permitted hereunder or any Disposition, in each case to the extent constituting indemnification obligations or obligations in respect of purchase price (including earn-outs, seller notes and purchase price adjustments) or other similar adjustments;

(n) Indebtedness representing deferred compensation to employees of the Borrower and its Subsidiaries incurred in the ordinary course of business;

(o) Indebtedness consisting of obligations of the Borrower and the Restricted Subsidiaries under deferred compensation or other similar arrangements with employees incurred by such Person in connection with the Transactions, Permitted Acquisitions, Acquisition Transaction or any Investment expressly permitted hereunder (other than pursuant to **Section 7.02(o)**);

(p) Indebtedness to current or former officers, directors, managers, consultants, and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of the Borrower permitted by **Section 7.06**;

(q) Indebtedness in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments issued or created in the ordinary course of business, including such Indebtedness or other obligations that is consistent with past practices in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims and letters of credit that are cash collateralized;

(r) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, incurred in the ordinary course of business;

(s) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of the Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case, in the ordinary course of business or consistent with past practices;

(t) Indebtedness incurred by a Securitization Subsidiary in a Qualified Securitization Financing that is not recourse (except for Standard Securitization Undertakings) to the Borrower or any other Loan Party;

(u) (i) Indebtedness in respect of letters of credit issued for the account of the Borrower or any Restricted Subsidiary so long as (A) such Indebtedness is not secured by any Lien on Collateral other than Permitted Liens and (B) the aggregate face amount of such letters of credit does not exceed the greater of (I) 10.00% of Closing Date EBITDA and (II) 10.00% of TTM Consolidated Adjusted EBITDA, determined at the time of issuance of such letter of credit and

(ii) Indebtedness in respect of letters of credit that are fully cash collateralized;

(v) (i) obligations in respect of Cash Management Obligations,

(ii) Cash Management Obligations (as defined in the ABL Credit Agreement) and

(iii) other Indebtedness in respect of netting services, automatic clearinghouse arrangements, overdraft protections, employee credit card programs and other cash management and similar arrangements,

in each case of **clauses (i)** through **(iii)**, incurred in the ordinary course of business or consistent with past practices and any Guarantees thereof;

(w) Guarantees in respect of Indebtedness of the Borrower or any of the Restricted Subsidiaries otherwise permitted hereunder; *provided* that

(A) no Guarantee by any Restricted Subsidiary of any Junior Financing shall be permitted unless such Restricted Subsidiary shall have also provided a Guarantee of the Obligations substantially on the terms set forth in the Guaranty and

(B) if the Indebtedness being guaranteed is subordinated in right of payment to the Obligations, such Guarantee shall be subordinated to the Guaranty in right of payment on terms at least as favorable to the Lenders as those contained in the subordination terms with respect to such Indebtedness;

(x) Indebtedness incurred on behalf of, or representing Guarantees of Indebtedness of, any Joint Ventures in an aggregate principal amount not to exceed the greater of (A) 25.00% of Closing Date EBITDA and (B) 25.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination, determined at the time of incurrence, and any Permitted Refinancing of the foregoing;

(y) Indebtedness in an aggregate principal amount at any time outstanding not to exceed the sum of the greater of (A) 50.00% of Closing Date EBITDA and (B) 50.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination, determined at the time of incurrence, and any Permitted Refinancing of the foregoing; and

(z) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (a) through (y) above.

For purposes of determining compliance with this Section 7.03, in the event that an item of Indebtedness (or any portion thereof) meets the criteria of more than one of the categories set forth above, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such item of Indebtedness (or any portion thereof) in any manner that complies with this covenant on the date such Indebtedness is incurred or such later time, as applicable; *provided* that all Indebtedness under (a) the Loan Documents will be deemed to have been incurred in reliance on the exception in Section 7.03(a) and (b) the ABL Credit Agreement on the Closing Date will be deemed incurred in reliance on the exception in Section 7.03(b), and shall not be permitted to be reclassified pursuant to this paragraph.

For purposes of determining compliance with any Dollar-denominated (or percentage of TTM Consolidated Adjusted EBITDA, if greater) restriction on the incurrence of Indebtedness, the Dollar equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed or first incurred (whichever yields the lower Dollar equivalent), in the case of revolving credit debt; *provided* that if such Indebtedness is incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable Dollar-denominated (or percentage of TTM Consolidated Adjusted EBITDA, if greater) restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar-denominated (or percentage of TTM Consolidated Adjusted EBITDA, if greater) restriction will be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced (*plus* unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses in connection therewith).

The accrual of interest and the accretion of accreted value and the payment of interest in the form of additional Indebtedness shall not be deemed to be an incurrence of Indebtedness for purposes of this **Section 7.03** or **Section 2.13**. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date shall be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP.

Section 7.04 Fundamental Changes. Merge, dissolve, liquidate, consolidate or amalgamate with or into another Person, or effect a Division, except that:

(a) Any Restricted Subsidiary may merge, amalgamate or consolidate with the Borrower (including a merger or amalgamation, the purpose of which is to reorganize the Borrower into a new jurisdiction); provided that:

(i) the Borrower shall be the continuing or surviving Person; and

(ii) such merger, amalgamation or consolidation does not result in the Borrower ceasing to be organized under the Laws of the United States, any state thereof or the District of Columbia; and

(b) any Restricted Subsidiary may merge, amalgamate or consolidate with or into any other Restricted Subsidiary or liquidate or dissolve;

(c) any merger or amalgamation the purpose of which is to reincorporate or reorganize a Restricted Subsidiary in another jurisdiction shall be permitted;

(d) any Restricted Subsidiary may liquidate or dissolve or change its legal form; *provided* (i) no Event of Default shall result therefrom and (ii) the surviving Person (or the Person who receives the assets of such dissolving or liquidated Restricted Subsidiary) shall be a Restricted Subsidiary;

(e) so long as no Default exists or would result therefrom, the Borrower may merge, amalgamate or consolidate with any other Person; *provided* that:

(i) the Borrower shall be the continuing or surviving corporation; or

(ii) if the Person formed by or surviving any such merger, amalgamation or consolidation is not the Borrower (any such Person, the “**Successor Borrower**”);

(a) the Successor Borrower shall be an entity organized or existing under the laws of the United States, any state thereof or the District of Columbia;

(b) the Successor Borrower shall expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent;

(c) each Guarantor, unless it is the other party to such merger, amalgamation or consolidation, shall have by a supplement to the Guaranty confirmed that its Guarantee of the Obligations shall apply to the Successor Borrower's obligations under this Agreement;

(d) each Loan Party, unless it is the other party to such merger, amalgamation or consolidation, shall have by a supplement to the Security Agreement confirmed that its obligations thereunder shall apply to the Successor Borrower's obligations under this Agreement and the direct parent of such Person shall pledge 100.00% of the Equity Interests of such Person to the Administrative Agent as Collateral to secure the Obligations; and

(e) the Borrower shall have delivered to the Administrative Agent an officer's certificate and an opinion of counsel, each stating that such merger, amalgamation or consolidation and such supplement to this Agreement or any Collateral Document comply with this Agreement, and, with respect to such opinion of counsel only, including customary organization, due execution, no conflicts and enforceability opinions to the extent reasonably requested by the Administrative Agent;

it being agreed that if the foregoing are satisfied, the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement;

(f) any Restricted Subsidiary may merge, amalgamate or consolidate with any other Person in order to effect an Investment, Acquisition Transaction or other transaction not prohibited by the Loan Documents (other than any transaction pursuant to **Section 7.02(o)**);

(g) any Loan Party or any Restricted Subsidiary may conduct a Division that produces two or more surviving or resulting Persons; *provided* that

(i) if a Division is conducted by the Borrower, then each surviving or resulting Person shall constitute a "**Borrower**" for all purposes of the Loan Documents (unless the Administrative Agent otherwise consents in its reasonable discretion) and shall remain jointly and severally liable for all Obligations (other than Excluded Swap Obligations, where applicable) of the Borrower immediately prior to such Division and otherwise comply with **Section 7.04(e)**;

(ii) [reserved]; and

(iii) if a Division is conducted by a Loan Party other than the Borrower, then each surviving or resulting Person of such Division shall also be a Loan Party unless and to the extent any such surviving or resulting Loan Party is the subject of a Disposition permitted pursuant to **Section 7.05** (other than **Section 7.05(e)**) or otherwise would constitute an Excluded Subsidiary; *provided further* that such surviving or resulting Person not becoming a Loan Party and the assets and property of such surviving or resulting Person not becoming Collateral shall, in each case, be treated as an Investment and shall be permitted under this **Section 7.04(g)(iii)** solely to the extent permitted under **Section 7.02**; and

(h) as long as no Default exists or would result therefrom, a merger, amalgamation, dissolution, liquidation, consolidation or Disposition, the purpose of which is to effect a Disposition permitted pursuant to **Section 7.05** (other than **Section 7.05(e)**).

Notwithstanding anything herein to the contrary, in the event of any merger, dissolution, liquidation, consolidation, amalgamation or Division of any Loan Party or a Restricted Subsidiary effected in accordance with this **Section 7.04**, the Borrower shall or shall cause, with respect to each surviving or continuing Restricted Subsidiary

(a) promptly deliver or cause to be delivered to the Administrative Agent for further distribution by the Administrative Agent to each Lender (i) such information and documentation reasonably requested by the Administrative Agent or any Lender in order to comply with applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act and (ii) a Beneficial Ownership Certification and

(b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent or Collateral Agent may reasonably request in order to perfect or continue the perfection of the Liens granted or purported to be granted by the Collateral Documents in accordance with **Section 6.11** and as promptly as practicable.

Section 7.05 Dispositions. Make any Disposition, except:

(a) Dispositions of obsolete, damaged, worn out, used or surplus property (including for purposes of recycling), whether now owned or hereafter acquired and Dispositions of property of the Borrower and the Restricted Subsidiaries that is no longer used or useful in the conduct of the business or economically practicable or commercially desirable to maintain;

(b) Dispositions of property in the ordinary course of business;

(c) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property; *provided* that to the extent the property being transferred constitutes Collateral such replacement property shall constitute Collateral;

(d) Dispositions of property to the Borrower or a Restricted Subsidiary;

(e) Dispositions permitted by **Section 7.02** (other than **Section 7.02(o)**), **Section 7.04** (other than **Section 7.04(h)**) and **Section 7.06** (other than **Section 7.06(d)**) and Permitted Liens;

(f) Dispositions of property pursuant to Sale Leaseback Transactions; *provided* that (i) no Event of Default exists or would result therefrom (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Event of Default exists) and (ii) such Disposition shall be for no less than the fair market value of such property at the time of such Disposition;

(g) Dispositions of Cash Equivalents; **provided** that such Disposition shall be for no less than the fair market value of such property at the time of such Disposition;

(h) leases, subleases, licenses or sublicenses (including the provision of software under an open source license), which do not materially interfere with the business of the Borrower and the Restricted Subsidiaries, taken as a whole; **provided** that such Disposition shall be for no less than the fair market value of such property at the time of such Disposition;

(i) Dispositions of property subject to Casualty Events upon receipt of the Net Cash Proceeds of such Casualty Event;

(j) Dispositions; **provided** that:

(i) at the time of such Disposition (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Default exists), no Default shall exist or would result from such Disposition;

(ii) with respect to any Disposition pursuant to this **clause (j)** for a purchase price in excess of the greater of (A) 10.00% of Closing Date EBITDA and (B) 10.00% of TTM Consolidated Adjusted EBITDA as of the date of the Disposition, the Borrower or any of the Restricted Subsidiaries shall receive not less than 75.00% of such consideration in the form of cash or Cash Equivalents; **provided, however**, that for the purposes of this **clause (ii)** each of the following shall be deemed to be cash;

(a) any liabilities (as shown on the Borrower's or such Restricted Subsidiary's most recent balance sheet provided hereunder or in the footnotes thereto) of the Borrower or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the payment in cash of the Obligations, that are assumed by the transferee with respect to the applicable Disposition and for which the Borrower and all of the Restricted Subsidiaries shall have been validly released by all applicable creditors in writing;

(b) any securities received by such Borrower or Restricted Subsidiary from such transferee that are converted by such Borrower or Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within one hundred and eighty days following the closing of the applicable Disposition; and

(c) any Designated Non-Cash Consideration received in respect of such Disposition having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this **clause (C)** that is at that time outstanding, not in excess of the greater of (I) 20.00% of Closing Date EBITDA and (II) 20.00% of TTM Consolidated Adjusted EBITDA as of the date of the Disposition, with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value;

(iii) such Disposition shall be for no less than the fair market value of such property at the time of such Disposition

(this **clause (j)**, the “**General Asset Sale Basket**”);

(k) Dispositions of Investments in Joint Ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the Joint Venture parties set forth in joint venture arrangements and similar binding arrangements;

(l) Dispositions or discounts of accounts receivable and related assets in connection with the collection, compromise or factoring thereof;

(m) Dispositions (including issuances or sales) of Equity Interests in, or Indebtedness owing to, or of other securities of, an Unrestricted Subsidiary;

(n) Dispositions to the extent of any exchange of like property (excluding any boot thereon permitted by such provision) for use in any business conducted by the Borrower or any of the Restricted Subsidiaries to the extent allowable under Section 1031 of the Code (or comparable or successor provision);

(o) Dispositions in connection with the unwinding of any Hedge Agreement;

(p) Dispositions by the Borrower or any Restricted Subsidiary of assets in connection with the closing or sale of a facility in the ordinary course of business of the Borrower and its Restricted Subsidiaries, which consist of fee or leasehold interests in the premises of such facility, the equipment and fixtures located at such premises and the books and records relating exclusively and directly to the operations of such facility; **provided** that as to each and all such sales and closings, (i) no Event of Default shall result therefrom and (ii) such sale shall be on commercially reasonable prices and terms in a bona fide arm’s-length transaction;

(q) Dispositions (including bulk sales) of the inventory of a Loan Party not in the ordinary course of business in connection with facility closings, at arm’s length;

(r) Disposition of Securitization Assets to a Securitization Subsidiary in connection with a Qualified Securitization Financing; **provided** that such Disposition shall be for no less than the fair market value of such property at the time of such Disposition;

(s) the lapse, abandonment or discontinuance of the use or maintenance of any Intellectual Property if previously determined by the Borrower or any Restricted Subsidiary in its reasonable business judgment that such lapse, abandonment or discontinuance is desirable in the conduct of its business;

(t) Disposition of any property or asset with a and for fair market value not to exceed the greater of (A) 15.00% of Closing Date EBITDA and (B) 15.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of measurement in any fiscal year in the aggregate for all such transactions in any fiscal year, with unused amounts in any fiscal year being carried over to succeeding fiscal years;

(u) Disposition of assets acquired in a Permitted Acquisition or other Investment permitted hereunder that the Borrower determines will not be used or useful in the business of the Borrower and its Subsidiaries;

(v) Dispositions of Excluded Assets by Non-Loan Parties and Dispositions of Excluded Assets by Loan Parties for fair market value; and

(w) Disposition of Equity Interests in A Place for Rover, Inc., or any successor thereto.

To the extent any Collateral is Disposed of as expressly permitted by this **Section 7.05** to any Person other than a Loan Party, such Collateral shall be sold free and clear of the Liens created by the Loan Documents, and, if requested by the Administrative Agent, upon the certification by the Borrower that such Disposition is permitted by this Agreement, and without limiting the provisions of **Section 9.11** the Administrative Agent shall be authorized to, and shall, take any actions reasonably requested by the Borrower in order to effect the foregoing (and the Lenders hereby authorize and direct the Administrative Agent to conclusively rely on any such certification by the Borrower in performing its obligations under this sentence).

Notwithstanding anything to the contrary contained herein, in no event shall the Borrower or any Restricted Subsidiary (a) consummate any disposition of any material intellectual property to any Unrestricted Subsidiary, (b) contribute or otherwise make any Investment of any material intellectual property to or in any Unrestricted Subsidiary or (c) designate any Subsidiary as an Unrestricted Subsidiary if such Subsidiary owns any material intellectual property; provided that the foregoing clauses (a), (b) and (c) shall not apply to transactions that have a bona fide business purpose so long as such transactions are not undertaken to facilitate a financing (including a debtor in possession financing) or a Restricted Payment or undertaken in connection with a liability management transaction.

Section 7.06 Restricted Payments. Make, directly or indirectly, any Restricted Payment, except:

(a) each Restricted Subsidiary may make Restricted Payments to the Borrower and to any other Restricted Subsidiaries (and, in the case of a Restricted Payment by a non-wholly owned Restricted Subsidiary, to the Borrower or any such other Restricted Subsidiaries and to each other owner of Equity Interests of such Restricted Subsidiary ratably according to their relative ownership interests of the relevant class of Equity Interests or as otherwise required by the applicable Organization Documents);

(b) the Borrower and each of the Restricted Subsidiaries may declare and make Restricted Payments payable in the form of Equity Interests (other than Disqualified Equity Interests not otherwise permitted to be incurred under **Section 7.03**) of such Person;

(c) [Reserved];

(d) to the extent constituting Restricted Payments, the Borrower and the Restricted Subsidiaries may enter into and consummate transactions expressly permitted by any provision of **Section 7.02** (other than **Section 7.02(o)**), **7.04** (other than a merger, amalgamation or consolidation involving the Borrower) or **7.07** (other than **Section 7.07(a)**, **(j)** or **(k)**);

(e) Restricted Payments in respect of the repurchase of Equity Interests in the Borrower or any Restricted Subsidiary that occur upon or in connection with the exercise of stock options or warrants or similar rights if such Restricted Payments represent a portion of the exercise price of such options or warrants or similar rights or tax withholding obligations with respect thereto;

(f) Restricted Payments of Equity Interests in, Indebtedness owing from and/or other securities of or Investments in, any Unrestricted Subsidiaries (other than any Unrestricted Subsidiaries the assets of which consist solely of cash or Cash Equivalents received from an Investment by the Borrower and/or any Restricted Subsidiary into it);

(g) the Borrower may pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests of the Borrower held by any Management Stockholder, including pursuant to any employee or director equity plan, employee or director stock option or profits interest plan or any other employee or director benefit plan or any agreement (including any separation, stock subscription, shareholder or partnership agreement) with any employee, director, consultant or distributor of the Borrower or any of its Subsidiaries; ***provided***, the aggregate Restricted Payments made pursuant to this **Section 7.06(g)** after the Closing Date together with the aggregate amount of loans and advances to the Borrower made pursuant to **Section 7.02(j)** in lieu of Restricted Payments permitted by this **clause (g)** shall not exceed:

(i) the greater of (A) 20.00% of Closing Date EBITDA and (B) 20.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of measurement in any calendar year, with unused amounts in any calendar year being carried over to the next two succeeding calendar years; ***plus***

(ii) an amount not to exceed the cash proceeds of key man life insurance policies received by the Borrower or the Restricted Subsidiaries after the Closing Date; ***plus***

(iii) to the extent contributed in cash to the common Equity Interests of the Borrower and Not Otherwise Applied, the proceeds from the sale of Equity Interests of the Borrower to a Person that is or becomes a Management Stockholder that occurs after the Closing Date; ***plus***

(iv) the amount of any cash bonuses or other compensation otherwise payable to any future, present or former Company Person that are foregone in return for the receipt of Equity Interests of the Borrower or any Restricted Subsidiary; ***plus***

(v) payments made in respect of withholding or other similar taxes payable upon repurchase, retirement or other acquisition or retirement of Equity Interests of the Borrower or its Subsidiaries or otherwise pursuant to any employee or director equity plan, employee or director stock option or profits interest plan or any other employee or director benefit plan or any agreement;

(h) [Reserved];

(i) Restricted Payments (i) made in connection with the payment cash in lieu of fractional Equity Interests in connection with any dividend, split or combination thereof or any Permitted

Acquisition or other transaction permitted by the Loan Documents or (ii) to honor any conversion request by a holder of convertible Indebtedness and to make cash payments in lieu of fractional shares in connection therewith;

(j) the declaration and payment of dividends on the Borrower's common stock, not to exceed an amount *per annum* equal to the greater of (A) the sum of (i) 6.00% of the net proceeds of the Borrower's initial public offering and (ii) any follow on primary offering received by the Borrower and (B) an amount equal to 7.00% of the Market Capitalization of the Borrower;

(k) repurchases of Equity Interests (i) deemed to occur on the exercise of options by the delivery of Equity Interests in satisfaction of the exercise price of such options or (ii) in consideration of withholding or similar Taxes payable by any future, present or former employee, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing), including deemed repurchases in connection with the exercise of stock options or the vesting of any equity awards;

(l) payments or distributions to satisfy dissenters rights (including in connection with or as a result of the exercise of appraisal rights and the settlement of any claims or actions, whether actual, contingent or potential) pursuant to or in connection with a merger, amalgamation, consolidation, transfer of assets or other transaction permitted by the Loan Documents;

(m) payments or distributions of a Restricted Payment within 60 days after the date of declaration thereof if at the date of declaration such Restricted Payment would have been permitted hereunder;

(n) Restricted Payments (not consisting of cash or Cash Equivalents) made in lieu of fees or expenses (including by way of discount), in each case in connection with any Qualified Securitization Financing;

(o) the Borrower may (i) redeem, repurchase, retire or otherwise acquire in whole or in part any Equity Interests of the Borrower or any Restricted Subsidiary ("**Treasury Equity Interests**"), in exchange for, or with the proceeds (to the extent contributed to the Borrower substantially concurrently) of the sale or issuance (other than to the Borrower or any Restricted Subsidiary) of, other Equity Interests or rights to acquire its Equity Interests ("**Refunding Equity Interests**") and (ii) declare and pay dividends on any Treasury Equity Interests out of any such proceeds;

(p) redemptions in whole or in part of any of its Equity Interests for another class of its Equity Interests (other than Disqualified Equity Interests, except to the extent issued by the Borrower to a Restricted Subsidiary) or with proceeds from substantially concurrent equity contributions or issuances of new Equity Interests (and in no event shall such contribution or issuance so utilized increase the Available Amount) (other than Disqualified Equity Interests, except to the extent issued by the Borrower to a Restricted Subsidiary);

(q) Restricted Payments constituting or otherwise made in connection with or relating to any Permitted Reorganization; *provided* that if immediately after giving Pro Forma Effect to any such Permitted Reorganization and the transactions to be consummated in connection therewith, any distributed asset ceases to be owned by the Borrower or another Restricted

Subsidiary (or any entity ceases to be a Restricted Subsidiary), the applicable portion of such Restricted Payment must be otherwise permitted under another provision of this **Section 7.06** (and constitute utilization of such other Restricted Payment exception or capacity);

(r) Restricted Payments; *provided* that the Total Net Leverage Ratio (after giving Pro Forma Effect to such Restricted Payment) for the Test Period immediately preceding the making of such Restricted Payment shall be less than or equal to the Closing Date Total Net Leverage Ratio less 0.50 to 1.00; *provided* that no Specified Event of Default has occurred or is continuing or would result therefrom;

(s) the Borrower may make Restricted Payments (the proceeds of which may be utilized by the Borrower to make additional Restricted Payments) in an aggregate amount not to exceed the sum of,

(i) the Available Amount that is Not Otherwise Applied as in effect immediately prior to the time of such Restricted Payment; *provided*, that no Event of Default shall have occurred and be continuing or would result therefrom and

(ii) the greater of (A) 25.00% of Closing Date EBITDA and (B) 25.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination; *provided* that no Event of Default shall have occurred and be continuing or would result therefrom; and

The amount set forth in **Section 7.06(s)(ii)** may, in lieu of Restricted Payments, be utilized by the Borrower or any Restricted Subsidiary to (i) make or hold any Investments without regard to **Section 7.02** or (ii) prepay, repay redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof any Junior Financing without regard to **Section 7.09(a)**.

The amount of any Restricted Payment at any time shall be the amount of cash and the fair market value of other property subject to the Restricted Payment at the time such Restricted Payment is made. For purposes of determining compliance with this **Section 7.06**, in the event that any Restricted Payment (or any portion thereof) meets the criteria of more than one of the categories set forth above, the Borrower may, in its sole discretion, at the time of such Restricted Payment is made, divide, classify or reclassify, or at any later time divide, classify, or reclassify, such Restricted Payment (or any portion thereof) in any manner that complies with this covenant on the date such Restricted Payment is made or such later time, as applicable.

Section 7.07 Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate of the Borrower, other than:

(a) transactions between or among the Borrower or any of the Restricted Subsidiaries or any entity that becomes a Restricted Subsidiary as a result of such transaction;

(b) transactions on terms substantially as favorable to the Borrower or such Restricted Subsidiary as would be obtainable by the Borrower or such Restricted Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate (as determined by the Borrower in good faith);

(c) the Transactions and the payment of fees and expenses (including the Transaction Expenses) related to the Transactions on or about the Closing Date to the extent such fees and expenses are disclosed to the Administrative Agent prior to the Closing Date;

(d) the issuance or transfer of Equity Interests of the Borrower to any Affiliate of the Borrower or any former, current or future officer, director, manager, employee or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) of the Borrower or any of its Subsidiaries;

(e) [reserved];

(f) employment and severance arrangements and confidentiality agreements among the Borrower and the Restricted Subsidiaries and their respective officers and employees in the ordinary course of business and transactions pursuant to stock option, profits interest and other equity plans and employee benefit plans and arrangements;

(g) the licensing of trademarks, copyrights or other Intellectual Property in the ordinary course of business to permit the commercial exploitation of intellectual property between or among Affiliates and Subsidiaries of the Borrower;

(h) the payment of customary fees and reasonable out-of-pocket costs to, and indemnities provided on behalf of, directors, officers, employees and consultants of the Borrower and the Restricted Subsidiaries in the ordinary course of business to the extent attributable to the ownership or operation of the Borrower and the Restricted Subsidiaries;

(i) any agreement, instrument or arrangement as in effect as of the Closing Date or any amendment thereto (so long as any such amendment is not adverse to the Lenders in any material respect as compared to the applicable agreement as in effect on the Closing Date);

(j) Restricted Payments permitted under **Section 7.06** and Investments permitted under **Section 7.02**;

(k) so long as no Specified Event of Default shall have occurred and be continuing or would result therefrom, customary payments by the Borrower and any of the Restricted Subsidiaries to the Sponsors made for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities (including in connection with acquisitions or divestitures), which payments are approved by a majority of the members of the Board of Directors of the Borrower in good faith or a majority of the disinterested members of the Board of Directors of the Borrower in good faith; *provided* that payments that would otherwise be permitted to be made under this **Section 7.07(k)** but for a Specified Event of Default may accrue during the continuance of such Event of Default and be paid when such Event of Default is no longer continuing;

(l) transactions in which the Borrower or any of the Restricted Subsidiaries, as the case may be, delivers to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or meets the requirements of **clause (b)** of this **Section 7.07** (without giving effect to the parenthetical phrase at the end thereof);

(m) any transaction with consideration valued at less than the greater of (A) 10.00% of Closing Date EBITDA and (B) 10.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination;

(n) investments by a Sponsor in securities of the Borrower or Indebtedness of the Borrower or any of the Restricted Subsidiaries so long as (A) the investment is being offered generally to other investors on the same or more favorable terms and (B) the investment constitutes less than 5.00% of the proposed or outstanding issue amount of such class of securities; *provided*, that any investments in debt securities by any Affiliated Debt Funds shall not be subject to the limitation in this **clause (B)**;

(o) payments to or from, and transactions with, Joint Ventures in the ordinary course of business;

(p) any Disposition of Securitization Assets or related assets in connection with any Qualified Securitization Financing;

(q) the payment of reasonable out-of-pocket costs and expenses relating to registration rights and indemnities provided to shareholders of the Borrower pursuant to the stockholders agreement or the registration and participation rights agreement entered into on the Closing Date in connection therewith;

(r) the payment of any dividend or distribution within sixty days after the date of declaration thereof, if at the date of declaration (i) such payment would have complied with the provisions of this Agreement and (ii) no Event of Default occurred and was continuing;

(s) transactions between the Borrower or any of the Subsidiaries and any Person, a director of which is also a director of the Borrower (subject to the *bona fide* related party transaction policies of the Borrower and its Subsidiaries);

(t) payments, loans (or cancellation of loans) or advances to employees or consultants that are (i) approved by a majority of the disinterested members of the Board of Directors of the Borrower in good faith, (ii) made in compliance with applicable law and (iii) otherwise permitted under this Agreement; and

(u) transactions

(i) with the Borrower in its capacity as a party to any Loan Document or to any agreement, document or instrument governing or relating to (A) any Indebtedness permitted to be incurred pursuant to **Section 7.03** (including Permitted Refinancings thereof) or (B) any other agreements contemplated thereby or any agreement, document or instrument governing or relating to any Permitted Acquisition (whether or not consummated) and

(ii) with any Affiliate or branch in its capacity as a Lender party to any Loan Document or party to any agreement, document or instrument governing or relating to any Indebtedness permitted to be incurred pursuant to **Section 7.03** (including Permitted

Refinancings thereof) to the extent such Affiliate or branch is being treated no more favorably than all other Lenders or lenders thereunder.

Section 7.08 Negative Pledge. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that prohibits or restricts the ability of any Restricted Subsidiary (other than an Excluded Subsidiary) (i) that is not a Loan Party, to make dividends or distributions to (directly or indirectly), or to make or repay loans or advances to, any Loan Party or (ii) to create, incur, assume or suffer to exist Liens on property of such Person (other than Excluded Assets) for the benefit of the Lenders to secure the Obligations under the Loan Documents (other than Incremental Facilities that are not intended to be secured on a first lien basis);

provided that the foregoing shall not apply to Contractual Obligations that:

(a) exist on the Closing Date, including Contractual Obligations governing Indebtedness incurred on the Closing Date to finance the Transactions and any Permitted Refinancing thereof or other Contractual Obligations executed on the Closing Date in connection with the Transactions;

(b) are binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary, so long as such Contractual Obligations were not entered into in contemplation of such Person becoming a Restricted Subsidiary or binding with respect to any asset at the time such asset was acquired;

(c) are Contractual Obligations of a Restricted Subsidiary that is not a Loan Party or to the extent applicable only to Excluded Assets;

(d) are customary restrictions that arise in connection with (A) any Lien permitted by Section 7.01 and relate to the property subject to such Lien or (B) any Disposition permitted by Section 7.05 applicable pending such Disposition solely to the assets (including Equity Interests) subject to such Disposition;

(e) are joint venture agreements and other similar agreements applicable to Joint Ventures and applicable solely to such Joint Venture;

(f) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under Section 7.03 but solely to the extent any negative pledge relates to the property financed by or the subject of or that secures such Indebtedness and the proceeds and products thereof;

(g) are restrictions in leases, subleases, licenses, sublicenses or agreements governing a disposition of assets, trading, netting, operating, construction, service, supply, purchase, sale or other agreements entered into in the ordinary course of business so long as such restrictions relate to the assets subject thereto;

(h) comprise restrictions imposed by any agreement relating to secured Indebtedness permitted pursuant to Section 7.03 to the extent that such restrictions apply only to the property or assets securing such Indebtedness;

- (i) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest;
- (j) are customary provisions restricting assignment of any agreement entered into in the ordinary course of business;
- (k) are restrictions on cash or other deposits imposed by customers or trade counterparties under contracts entered into in the ordinary course of business;
- (l) arise in connection with cash or other deposits permitted under **Section 7.01**;
- (m) comprise restrictions that are, taken as a whole, in the good faith judgment of the Borrower
 - (i) no more restrictive with respect to the Borrower or any Restricted Subsidiary than customary market terms for Indebtedness of such type, or
 - (ii) no more restrictive than the restrictions contained in this Agreement, or not reasonably anticipated to materially and adversely affect the Loan Parties' ability to make any payments required hereunder;
- (n) apply by reason of any applicable Law, rule, regulation or order or are required by any Governmental Authority having jurisdiction over the Borrower or any Restricted Subsidiary;
- (o) customary restrictions contained in Indebtedness permitted to be incurred pursuant to **Section 7.03(h), (i), (j), (k), (l), (m), (x) or (y)**;
- (p) Contractual Obligations that are subject to the applicable override provisions of the UCC;
- (q) customary provisions (including provisions limiting the Disposition, distribution or encumbrance of assets or property) included in sale leaseback agreements or other similar agreements;
- (r) net worth provisions contained in agreements entered into by the Borrower or any Restricted Subsidiary, so long as the Borrower has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of the Borrower or such Restricted Subsidiary to meet its ongoing obligations;
- (s) restrictions arising in any agreement relating to (i) any Cash Management Obligation to the extent such restrictions relate solely to the cash, bank accounts or other assets or activities subject to the applicable Cash Management Services, (ii) any treasury arrangements and (iii) any Hedge Agreement;
- (t) restrictions on the granting of a security interest in Intellectual Property contained in licenses, sublicenses or cross-licenses by the Borrower or any Restricted Subsidiary of such Intellectual Property, which licenses, sublicenses and cross-licenses were entered into in the ordinary course of business; and

(u) other restrictions or encumbrances imposed by any amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing of the contracts, instruments or obligations referred to in the preceding clauses of this **Section 7.08**; *provided* that no such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing is, in the good faith determination of the Borrower, materially more restrictive with respect to such encumbrances and other restrictions, taken as a whole, than those in effect prior to the relevant amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

Section 7.09 Junior Debt Prepayments; Amendments to Junior Financing Documents.

(a) **Prepayments of Junior Financing.** Prepay, repay, redeem, purchase, defease or otherwise satisfy prior to the date that is one year before the scheduled maturity thereof any Junior Financing (any such prepayment, repayment, redemption, purchase, defeasance or satisfaction, a “**Junior Debt Repayment**”), except:

(i) Junior Debt Repayments with the proceeds of, or in exchange for, any (A) Permitted Refinancing or (B) other Junior Financing or Junior Lien Debt secured by Permitted Liens (*provided* that such incurrence will thereafter count in the calculation of any remaining basket capacity thereunder, while such Indebtedness remains outstanding);

(ii) Junior Debt Repayments (A) made with Qualified Equity Interests of the Borrower, with the proceeds of an issuance of any such Equity Interests or with the proceeds of a contribution to the capital of the Borrower after the Closing Date that is Not Otherwise Applied or (B) consisting of the conversion of any Junior Financing to Equity Interests;

(iii) Junior Debt Repayments of Indebtedness of the Borrower or any Restricted Subsidiary owed to the Borrower or a Restricted Subsidiary;

(iv) Junior Debt Repayments of Indebtedness of any Person that becomes a Restricted Subsidiary after the Closing Date in connection with a transaction not prohibited by the Loan Documents;

(v) Junior Debt Repayments within 60 days of giving notice thereof if at the date of such notice, such payment would have been permitted hereunder;

(vi) [reserved];

(vii) Junior Debt Repayments consisting of the payment of regularly scheduled interest and principal payments, payments of fees, expenses, penalty interest and indemnification obligations when due, other than payments prohibited by any applicable subordination provisions;

(viii) Junior Debt Repayments consisting of a payment to avoid the application of Section 163(e)(5) of the Code (an “**AHYDO Catch Up Payment**”);

(ix) Junior Debt Repayments; *provided* that the Total Net Leverage Ratio (after giving Pro Forma Effect to such Junior Debt Repayment) for the Test Period immediately preceding the making of such Junior Debt Repayment shall be less than or equal to the Closing Date Total Net Leverage Ratio less 0.50 to 1.00; *provided* that no Specified Event of Default has occurred or is continuing or would result therefrom; and

(x) Junior Debt Repayments in an aggregate amount not to exceed the sum of:

(a) the Available Amount that is Not Otherwise Applied at such time; *provided* that no Event of Default shall have occurred and be continuing or would result therefrom; and

(b) the greater of (A) 25.00% of Closing Date EBITDA and (B) 25.00% of TTM Consolidated Adjusted EBITDA on a Pro Forma Basis as of the applicable date of determination.

provided, however, that each of the following shall be permitted: payments of regularly scheduled principal and interest on Junior Financing, payments of closing and consent fees related to Junior Financing, indemnity and expense reimbursement payments in connection with Junior Financing, and mandatory prepayments, mandatory redemptions and mandatory purchases, in each case pursuant to the terms of Junior Financing Documentation.

The amount set forth in **Section 7.09(a)(x)(A)** may, in lieu of Junior Debt Repayments be utilized by the Borrower or any Restricted Subsidiary to make or hold any Investments without regard to **Section 7.02**.

The amount of any Junior Debt Repayment at any time shall be the amount of cash and the fair market value of other property used to make the Junior Debt Repayment at the time such Junior Debt Repayment is made. For purposes of determining compliance with this **Section 7.09(a)**, in the event that any prepayment, repayment, redemption, purchase, defeasance or satisfaction (or any portion thereof) meets the criteria of more than one of the categories set forth above, the Borrower may, in its sole discretion, at the time of such prepayment, repayment, redemption, purchase, defeasance or satisfaction is made, divide, classify, or reclassify, or at any later time divide, classify or reclassify, such prepayment, repayment, redemption, purchase, defeasance or satisfaction (or any portion thereof) in any manner that complies with this covenant on the date it was made or such later time, as applicable.

(b) **Amendments to Junior Financing Documents.** Amend, modify or change in any manner without the consent of the Administrative Agent, any Junior Financing Documentation unless (i) such amendment, modification or change is permitted pursuant to any applicable intercreditor or subordination agreement or (ii) the Borrower determines in good faith that the effect of such amendment, modification or waiver is not, taken as a whole, materially adverse to the interests of the Lenders, in each case, other than as a result of a Permitted Refinancing thereof; *provided* that, in each case, a certificate of the Borrower delivered to the Administrative Agent at least five Business Days prior to such amendment or other modification, together with a reasonably detailed description of such amendment or modification, stating that the Borrower has reasonably determined in good faith that such terms and conditions satisfy such foregoing requirement shall

be conclusive evidence that such terms and conditions satisfy such foregoing requirement unless the Administrative Agent notifies the Borrower in writing within such five Business Day period that it disagrees with such determination (including a reasonably detailed description of the basis upon which it disagrees).

Section 7.10 [Reserved].

Section 7.11 **Changes in Fiscal Year.** Make any change in the fiscal year of the Borrower; *provided, however*, that the Borrower may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

ARTICLE VIII. EVENTS OF DEFAULT AND REMEDIES

Section 8.01 **Events of Default.** Each of the events referred to in clauses (a) through (j) of this Section 8.01 constitutes an “**Event of Default**”:

(a) **Non-Payment.** Any Loan Party fails to pay (i) when and as required to be paid pursuant to the terms of this Agreement, any amount of principal of any Loan, or (ii) within five Business Days after the same becomes due, any interest on any Loan or any fee payable pursuant to the terms of a Loan Document;

(b) **Specific Covenants.** The Borrower or any Subsidiary Guarantor fails to perform or observe any covenant contained in Section 6.03(a), Section 6.05(a) (solely with respect to the Borrower) or Article VII; or

(c) **Other Defaults.** The Borrower or any Subsidiary Guarantor fails to perform or observe any other covenant (not specified in Section 8.01(a) or Section (b)) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty days after receipt by the Borrower of written notice thereof from the Administrative Agent; or

(d) **Representations and Warranties.** Any representation or warranty made or deemed by any Loan Party in any Loan Document, or in any document required to be delivered pursuant to the terms of a Loan Document shall be untrue in any material respect (or, with respect to any representation or warranty qualified by materiality or “**Material Adverse Effect**,” shall be untrue in any respect) when made or deemed made; *provided* that in the case of any representation and warranty made or deemed made after the Closing Date that is capable of being cured, such representation or warranty shall remain untrue (in any material respect or in any respect, as applicable) or uncorrected for a period of thirty days after written notice thereof from the Administrative Agent to the Borrower; or

(e) **Cross-Default.** The Borrower or any Subsidiary Guarantor:

(i) fails to make any payment of any principal or interest beyond the applicable grace period, if any, whether by scheduled maturity, required prepayment, acceleration, demand or otherwise, in respect of its Material Indebtedness; or

(ii) fails to perform or observe any covenant contained in an agreement governing its Material Indebtedness, or any other event occurs, the effect of which failure or other event is to cause such Material Indebtedness to become due prior to its stated maturity, in each case pursuant to its terms;

provided that

(A) this **Section 8.01(e)** shall not apply to any failure if it has been remedied, cured or waived, in accordance with the terms of such Material Indebtedness and

(B) **Section 8.01(e)(ii)** shall not apply

(1) to any secured Indebtedness that becomes due as a result of the sale, transfer or other disposition (including as a result of a casualty or condemnation event) of the property or assets securing such Indebtedness;

(2) to the failure to observe or perform any covenant that requires compliance with any measurement of financial or operational performance (including any leverage, interest coverage or fixed charge ratio or minimum EBITDA, a “**Financial Covenant**”) unless and until the holders of such Indebtedness have terminated all commitments (if any) and accelerated all obligations with respect thereto;

(3) to the conversion of, or the satisfaction of any condition to the conversion of, any Indebtedness that is convertible or exchangeable for Equity Interests;

(4) to a customary “change of control” put right in any indenture governing any such Indebtedness in the form of notes; or

(5) to a refinancing of Indebtedness permitted by this Agreement; or

(f) **Insolvency Proceedings, Etc.**

(i) Any Loan Party (A) institutes or consents to the institution of any proceeding under any Debtor Relief Law, (B) makes an assignment for the benefit of creditors or (C) applies for or consents to the appointment of any receiver, interim receiver, receiver and manager, monitor, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or any material part of its property;

(ii) any receiver, interim receiver, receiver and manager, monitor, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed for a Loan Party without the application or consent of such

Loan Party and the appointment continues undischarged or unstayed for sixty calendar days;

(iii) any proceeding under any Debtor Relief Law relating to a Loan Party is instituted without the consent of such Loan Party and continues undismissed or unstayed for sixty calendar days or

(iv) an order for relief is entered in any such proceeding; or

(g) **Judgments.** There is entered against a Loan Party a final, enforceable and non-appealable judgment by a court of competent jurisdiction for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance or another indemnity obligation) and such judgment or order is not satisfied, vacated, discharged or stayed or bonded for a period of sixty consecutive days; or

(h) **Invalidity of Loan Documents.** The material provisions of the Loan Documents, taken as a whole, at any time after their execution and delivery and for any reason cease to be in full force and effect, except

(i) as permitted by, or as a result of a transaction permitted by, the Loan Documents (including as a result of a transaction permitted under **Section 7.04** or **Section 7.05**),

(ii) as a result of the Termination Conditions or

(iii) resulting from acts or omissions of a Secured Party or the application of applicable law; or

(i) **Collateral Documents and Guarantee.** Any:

(i) Collateral Document with respect to a material portion of the Collateral with a fair market value exceeding the Threshold Amount after its execution and delivery shall for any reason cease to create a valid and perfected Lien, except

(A) as otherwise permitted by the Loan Documents,

(B) resulting from the failure of the Administrative Agent or the Collateral Agent or any of their agents or bailees to maintain possession or control of Collateral,

(C) resulting from the failure to make a filing of a continuation statement, under the Uniform Commercial Code or

(D) resulting from acts or omissions of a Secured Party; or

(ii) Guarantee with respect to a Guarantor that is the Borrower or a Material Subsidiary (other than an Excluded Subsidiary) shall for any reason cease to be in full force and effect, except

- (A) as otherwise permitted by the Loan Documents,
 - (B) upon the Termination Conditions,
 - (C) upon the release of such Guarantor as provided for under the Loan Document or in accordance with its terms or
 - (D) resulting from acts or omissions of a Secured Party or the application of applicable law; or
- (j) **Change of Control.** There occurs any Change of Control.

Section 8.02 Remedies upon Event of Default.

(a) **General.** If (and only if) any Event of Default occurs and is continuing, the Administrative Agent may, and shall at the request of the Required Lenders, take any or all of the following actions upon notice to the Borrower:

- (i) declare the Commitments of each Lender to be terminated, whereupon such Commitments and obligation shall be terminated; and
- (ii) declare the unpaid principal amount of all outstanding Loans, all interest and premium accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower and each Guarantor;

provided that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under any Debtor Relief Law, the Commitments of each Lender shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Administrative Agent or any Lender.

(b) **Limitations on Remedies; Cures.**

(i) **Net Short Representations.** Any notice of Default, Event of Default or acceleration provided to the Borrower by the Administrative Agent on behalf of one or more Lenders that have expressly requested that such notice be given to the Borrower must be accompanied by a written Net Short Representation from any such Lender (other than an Unrestricted Lender) delivered to the Borrower (with a copy to the Administrative Agent); *provided* that:

- (A) in the absence of any such written Net Short Representation, each such Lender shall be deemed to have represented and warranted to the Borrower and the Administrative Agent that it is not a Net Short Lender (it being understood and agreed that the Borrower and the Administrative Agent shall be entitled to rely conclusively on each such representation and deemed representation) and

(B) no Net Short Representation shall be required to be delivered during the pendency of a Default or Event of Default caused by a bankruptcy or similar insolvency proceeding.

(ii) [Reserved]; and

(iii) **Cures.** Any Default or Event of Default resulting from failure to provide notice pursuant to **Section 6.03(a)** shall be deemed not to be “continuing” or “existing” and shall be deemed cured upon delivery of such notice unless the Borrower knowingly fails to give timely notice of such Default or Event of Default as required hereunder.

(iv) **Administrative Agent Notice.** Upon, or prior to, taking any of the actions set forth in **Section 8.02(a)** or **(b)**, other than as set forth in the proviso of **Section 8.02(a)**, the Administrative Agent shall, on behalf of the Required Lenders deliver a notice of Default, Event of Default or acceleration, as applicable, to the Borrower.

For the avoidance of doubt, unless a Default or an Event of Default has occurred and is continuing, the Administrative Agent (and each other Secured Party) shall not take any of the actions described in this **Section 8.02** or bring an action or proceeding under the Loan Documents or with respect to the Obligations.

Section 8.03 Application of Funds. After the exercise of remedies provided for in **Section 8.02** (or after the Loans have automatically become immediately due and payable as set forth in the proviso to **Section 8.02(a)**), any amounts received on account of the Obligations shall, subject to the Intercreditor Agreements, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under **Section 10.04** and amounts payable under **Article III**) payable to the Administrative Agent and the Collateral Agent in their capacities as such;

Next, to payment in full of Unfunded Advances/Participations (the amounts so applied to be distributed between or among, as applicable, the Administrative Agent *pro rata* in accordance with the amounts of Unfunded Advances/Participations owed on the date of any such distribution);

Next, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest, Obligations under Secured Hedge Agreements and Cash Management Obligations) payable to the Lenders (including Attorney Costs payable under **Section 10.04** and amounts payable under **Article III**) ratably among them in proportion to the amounts described in this clause Third payable to them;

Next, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause held by them;

Next, to payment of that portion of the Obligations constituting unpaid principal of the Loans and the Obligations under Secured Hedge Agreements and Cash Management Obligations ratably among the Secured Parties in proportion to the respective amounts described in this clause held by them; *provided* that that Excluded Swap Obligations with respect to any Guarantor shall not be paid with amounts received from such Guarantor or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Obligations otherwise set forth above in this **Section 8.03**;

Next, to the payment of all other Obligations that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been paid in full, to the Borrower or as otherwise required by Law.

ARTICLE IX. ADMINISTRATIVE AGENT AND OTHER AGENTS

Section 9.01 Appointment and Authority of the Administrative Agent.

(a) Each Lender hereby irrevocably appoints Citibank, N.A. to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this **Article IX** (other than **Section 9.09** and **Section 9.11**) are solely for the benefit of the Administrative Agent and the Lenders, and neither the Borrower nor any Loan Party shall have any rights as a third party beneficiary of any such provision.

(b) Citibank, N.A. shall irrevocably act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank and/or Cash Management Bank) hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of (and to hold any security interest created by the Collateral Documents for and on behalf of or in trust for) such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” (and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to **Section 9.05** and **Section 9.12** for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this **Article IX** (including **Section 9.07**, as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Lenders and each other Secured Party hereby expressly authorize the Administrative Agent to execute any and all documents (including

releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto (including the Intercreditor Agreements), as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents and acknowledge and agree that any such action by any Agent shall bind the Lenders and each other Secured Party.

Section 9.02 Rights as a Lender. Any Lender that is also serving as an Agent (including as Administrative Agent) hereunder shall have the same rights and powers (and no additional duties or obligations) in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent, and the term “**Lender**” or “**Lenders**” shall, unless otherwise expressly indicated or unless the context otherwise requires, include each Lender (if any) serving as an Agent hereunder in its individual capacity. Any Person serving as an Agent and its Affiliates and branches may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust or other business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not an Agent hereunder and without any duty to account therefor, and may accept fees and other consideration from the Borrower for services in connection herewith and otherwise without having to account for the same. The Lenders acknowledge that, pursuant to such activities, any Agent or its Affiliates or branches may receive information regarding any Loan Party or any of its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that no Agent shall be under any obligation to provide such information to them.

Section 9.03 Exculpatory Provisions. None of the Administrative Agent, any of the other Agents, any of their respective Affiliates or branches, nor any of the officers, partners, directors, employees or agents of the foregoing shall have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, an Agent (including the Administrative Agent) or any of their respective officers, partners, directors, employees or agents:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing and without limiting the generality of the foregoing, the use of the term “agent” herein and in the other Loan Documents with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under any agency doctrine of any applicable Law and instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties;

(b) shall not have any duty to take any action or exercise any powers, except actions and powers expressly contemplated by the Loan Documents that such Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), **provided** that, notwithstanding any direction by the Required Lenders to the contrary, no Agent shall be required to take any such action

(i) that, in its opinion or the opinion of counsel (which may include Borrower’s counsel), may expose such Agent to liability or that is contrary to any Loan Document or applicable Law, including for the avoidance of doubt refraining from any action that, in its

opinion or the opinion of counsel, may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law or

(ii) unless it shall be indemnified to its satisfaction by the Lenders against any and all liability and expenses that may be incurred by it by reason of taking or continuing to take any such action (which satisfaction may require such indemnity from such Lenders to be joint and several obligations of such Lenders);

(c) shall not have any duty or responsibility to disclose, and shall not be liable for the failure to disclose to any Lender, any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their Affiliates, information relating to the Borrower or any of its Affiliates that is communicated to, obtained by or in possession of the Person serving as the Administrative Agent, a Lead Arranger or any of their respective Affiliates or branches in any capacity, except for notices, reports and other documents expressly required herein to be furnished to the Lenders by the Administrative Agent or the Lead Arranger, as applicable; and

(d) shall not be liable for any action taken or omitted to be taken under or in connection with any of the Loan Documents except to the extent caused by such Agent's gross negligence or willful misconduct as determined by a final, non-appealable judgment of a court of competent jurisdiction.

The Administrative Agent shall not be liable for any action taken or not taken by it

(i) with the consent, at the request of or ratified by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in **Section 8.02** and **Section 10.01**) (and such consent, request or ratification shall be binding upon all the Lenders and future holders of the Loans) or

(ii) in the absence of its own gross negligence or bad faith or willful misconduct as determined by a final, non-appealable judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein.

Any notice, consent, request, direction, instruction or ratification by the Required Lenders shall be executed by the Lenders of record providing such consent, request, direction, instruction or ratification. The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Administrative Agent by the Borrower or the Required Lenders in writing.

No Agent-Related Person shall be responsible for or have any duty to ascertain or inquire into

(i) any recital, statement, warranty or representation made in or in connection with any Loan Document (including any Release Certificate),

(ii) the contents of any certificate, report, statement or agreement or other document delivered pursuant to a Loan Document thereunder or in connection with a Loan Document or referred to or provided for in, or received by the Administrative Agent under or in connection with any Loan Document,

(iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or the occurrence of any Default or Event of Default,

(iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents,

(v) the value or the sufficiency of any Collateral, or

(vi) the satisfaction of any condition set forth in **Article IV** or elsewhere in a Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent, or to inspect the properties, books or records of any Loan Party or any Affiliate thereof.

The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Lenders, Affiliated Lenders or Net Short Lenders. Without limiting the generality of the foregoing, the Administrative Agent shall not:

(x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Lender, Affiliated Lender or Net Short Lender,

(y) have any liability with respect to or arising out of any assignment or participation of commitments or loans, or disclosure of confidential information, to any Disqualified Lender, Affiliated Lender or Net Short Lender or

(z) have any liability with respect to or arising out of the voting in any amendment or waiver to any Loan Document by any Net Short Lender.

The list of Disqualified Lenders shall be specified on a schedule that is held with the Administrative Agent, which list may be provided to any Lender or its proposed assignee upon request.

For the avoidance of doubt, no Agent shall be obligated to calculate or confirm the calculations of any financial covenants set forth herein or the other Loan Documents or in any of the financial statements of the Loan Parties. No Agent shall be liable to the Lenders for any apportionment or distribution of payments made by it to such Lenders in good faith and if any such apportionment or distribution is subsequently determined to have been made in error, the sole recourse of any Lender to whom payment was due but not made shall be to recover pro rata from the other Lenders any payment equal to the amount to which they are determined to be entitled

(and such other Lenders hereby agree to return to such Lender any such erroneous payments received by them).

In no event shall any Agent be liable for any failure or delay in the performance of their respective obligations under this Agreement or any related documents because of circumstances beyond such Agent's control, including, but not limited to, a failure, termination, or suspension of a clearing house, securities depository, settlement system or central payment system in any applicable part of the world or acts of God, flood, war (whether declared or undeclared), civil or military disturbances or hostilities, nuclear or natural catastrophes, political unrest, explosion, severe weather or accident, earthquake, terrorism, fire, riot, labor disturbances, strikes or work stoppages for any reason, embargo, government action, including any laws, ordinances, regulations or the like (whether domestic, federal, state, county or municipal or foreign) which delay, restrict or prohibit the providing of the services contemplated by this Agreement or any related documents, or the unavailability of communications or computer facilities, the failure of equipment or interruption of communications or computer facilities, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility, or any other causes beyond the Agent's control whether or not of the same class or kind as specified above.

Nothing in this Agreement or any other Loan Document shall require any Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder.

The Agents shall have no obligation for (a) perfecting, maintaining, monitoring, preserving or protecting the security interest or Lien granted under this Agreement, any other Loan Document, or any agreement or instrument contemplated hereby or thereby; (b) the filing, re-filing, recording, re-recording, or continuing of any document, financing statement, mortgage, assignment, notice, instrument of further assurance, or other instrument in any public office at any time or times; or (c) providing, maintaining, monitoring, or preserving insurance on or the payment of taxes with respect to any Collateral.

Section 9.04 Reliance by the Agents. The Agents shall be entitled to rely upon, and shall not incur any liability to any Lender for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, each Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. Each Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable to any Lender for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Each Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or other

requisite percentage of Lenders) and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action (which satisfaction may require such indemnity from such Lenders to be joint and several obligations of such Lenders). The Agents shall in all cases be fully protected in taking any action, or in refraining from taking any action under any Loan Document in accordance with a request or consent of the Required Lenders (or such greater number of Lenders as may be expressly required hereby in any instance) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders; **provided** that the Agents shall not be required to take any action that, in their opinion or in the opinion of counsel (which may include counsel for the Borrower), may expose such Agent to liability or that is contrary to any Loan Document or applicable Law. The Lenders and each other Secured Party agree not to instruct the Administrative Agent, Collateral Agent or any other Agent to take any action, or refrain from taking any action, that would, in each case, cause it to violate an express duty or obligation under this Agreement.

Section 9.05 Delegation of Duties. Each Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Documents by or through any one or more sub agents appointed by such Agent. Each Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Agent-Related Persons. The exculpatory provisions of this **Article IX** shall apply to any such sub agent and to the Agent-Related Persons of the Agents and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Agents. Notwithstanding anything herein to the contrary, with respect to each sub agent appointed by an Agent,

(i) such sub agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of the Loan Parties and the Lenders,

(ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub agent, and

(iii) such sub agent shall only have obligations to the Agent that appointed it as sub agent and not to any Loan Party, Lender or any other Person and no Loan Party, Lender or any other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub agent.

Each Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that such Agent acted with gross negligence or willful misconduct in the selection of such sub agents.

Section 9.06 Non-Reliance on Agents and Other Lenders; Disclosure of Information by Agents.

(a) Each Lender expressly acknowledges that no Agent-Related Person has made any representation or warranty to it, and that no act by any Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender as to any matter, including whether Agent-Related Persons have disclosed material information in their possession. Each Lender represents to each Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their respective Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower and the other Loan Parties hereunder. Each Lender also represents that it will, independently and without reliance upon any Agent, any other Lender or any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower and the other Loan Parties. Except for notices, reports and other documents expressly required to be furnished to the Lenders by any Agent herein, such Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their respective Affiliates which may come into the possession of any Agent-Related Person. Each Lender represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender agrees not to assert a claim in contravention of the foregoing. Each Lender represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities.

(b) Each Lender, by delivering its signature page to this Agreement or an Assignment and Assumption and funding its Term Loan on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be approved by any Agent, Required Lenders or Lenders, as applicable on the Closing Date.

(c) Each Lender acknowledges that certain Affiliates of the Loan Parties, including the Sponsors or entities controlled by the Sponsors, are Eligible Assignees hereunder and may

purchase Loans and/or Commitments hereunder from the Lenders from time to time, subject to the restrictions set forth in this Agreement.

Section 9.07 Indemnification of Agents.

(a) Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand the Administrative Agent, each Agent and each other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of any Agent, as applicable) (without limiting any indemnification obligation of any Loan Party to do so), pro rata, and hold harmless the Administrative Agent, each Agent and each other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of any Agent) from and against any and all Indemnified Liabilities incurred by it (regardless of whether any such claim, litigation, investigation or proceeding is by or against any such Lender); **provided** that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting from such Agent-Related Person's own gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction; **provided** that, no action taken in accordance with the terms of a Loan Document or in accordance with the directions of the Required Lenders (or such other number or percentage of the Lenders as shall be required by the Loan Documents) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 9.07. If any indemnity furnished to any Agent for any purpose shall, in the opinion of such Agent, be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this Section 9.07 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse each Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by such Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein; **provided** that such reimbursement by the Lenders shall not affect the Borrower's continuing reimbursement obligations with respect thereto; **provided further** that the failure of any Lender to indemnify or reimburse such Agent shall not relieve any other Lender of its obligation in respect thereof. The undertaking in this Section 9.07 shall survive termination of the Aggregate Commitments, the payment of all other Obligations and the resignation of the Administrative Agent, Collateral Agent and other Agents.

(b) Each Lender hereby authorizes the Administrative Agent and Collateral Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable or distributable by the Administrative Agent or the Collateral Agent to such Lender from any source against any amount due to the Administrative Agent or the Collateral Agent under Section 2.11 and this Section 9.07.

Section 9.08 No Other Duties; Other Agents, Lead Arranger, Managers, Etc. Citibank, N.A., Goldman Sachs Bank USA, BofA Securities, Inc., Credit Suisse Loan Funding LLC, UBS Securities LLC and Wells Fargo Securities, LLC is each hereby appointed as a Lead Arranger

hereunder, and each Lender hereby authorizes each of Citibank, N.A., Goldman Sachs Bank USA, BofA Securities, Inc., Credit Suisse Loan Funding LLC, UBS Securities LLC and Wells Fargo Securities, LLC to act as a Lead Arranger in accordance with the terms hereof and the other Loan Documents. Each Agent hereby agrees to act in its capacity as such upon the express conditions contained herein and the other Loan Documents, as applicable. Anything herein to the contrary notwithstanding, none of the Lead Arrangers or the other Agents listed on the cover page hereof (or any of their respective Affiliates or branches) shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except (a) in its capacity, as applicable, as the Administrative Agent, the Collateral Agent or a Lender hereunder and (b) as provided in Section 10.01(b)(iv), and such Persons shall have the benefit of this Article IX. Without limiting the foregoing, none of the Lenders or other Persons so identified shall have or be deemed to have any agency or fiduciary or trust relationship with any Lender, the Borrower or any of their respective Subsidiaries. Each Lender acknowledges that it has not relied, and will not rely, on any of the Lenders or other Persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder. Any Agent may resign from such role at any time, with immediate effect, by giving prior written notice thereof to the Administrative Agent and Borrower.

Section 9.09 Resignation of Administrative Agent or Collateral Agent. The Administrative Agent or the Collateral Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, subject to the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed), at all times other than during the existence of a Specified Event of Default, to appoint a successor, which shall be a Lender or a bank with an office in the United States, or an Affiliate or branch of any such Lender or bank with an office in the United States (or such other financial institution reasonably acceptable to the Borrower). If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty days after the retiring Administrative Agent or Collateral Agent, as applicable, gives notice of its resignation, then the retiring Administrative Agent or Collateral Agent, as applicable, may on behalf of the Lenders, appoint a successor Administrative Agent or Collateral Agent, as applicable, meeting the qualifications set forth above; **provided** that if the Administrative Agent or Collateral Agent, as applicable, shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and

(a) the retiring Administrative Agent or Collateral Agent, as applicable, shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent or Collateral Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor of such Agent is appointed) and

(b) except for any indemnity payments or other amounts owed to the retiring or retired Administrative Agents, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section.

If neither the Required Lenders nor the Administrative Agent have appointed a successor Administrative Agent, the Required Lenders shall be deemed to have succeeded to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent (subject to the proviso in the sentence above). Upon the acceptance of a successor's appointment as Administrative Agent or Collateral Agent, as applicable, hereunder and upon the execution and filing or recording of such financing statements, or amendments thereto, and such other instruments or notices, as may be necessary or appropriate, or as the Required Lenders may request, in order to perfect or continue the perfection of the Liens granted or purported to be granted by the Collateral Documents, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent or Collateral Agent, as applicable (other than any rights to indemnity payments or other amounts owed to the retiring or retired Administrative Agent), and the retiring Administrative Agent or Collateral Agent, as applicable, shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this **Section 9.09**). The fees payable by the Borrower to a successor Administrative Agent or Collateral Agent, as applicable, shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this **Article IX, Section 10.04 and Section 10.05** shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Agent-Related Persons in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Administrative Agent or Collateral Agent, as applicable.

Section 9.10 Administrative Agent May File Proofs of Claim; Credit Bidding. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated), by intervention in such proceeding or otherwise:

- (a) to file a verified statement pursuant to rule 2019 of the Federal Rules of Bankruptcy Procedure or other applicable Debtor Relief Law that, in its sole opinion, complies with such rule's or Debtor Relief Law's disclosure requirements for entities representing more than one creditor;
- (b) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under **Section 2.08 and Section 10.04**) allowed in such judicial proceeding; and
- (c) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, interim receiver, receiver and manager, monitor, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their respective agents and counsel, and any other amounts due the Administrative Agent under **Section 2.08** and **Section 10.04**. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Administrative Agent, its agents and counsel, and any other amounts due the Administrative Agent under **Section 2.08** and **Section 10.04** out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Lenders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or proposal or otherwise.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition or proposal affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral

(i) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, or any Debtor Relief Laws or similar Laws in any other jurisdictions to which a Loan Party is subject, or

(ii) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law.

In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid:

(A) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid,

(B) to adopt documents providing for the governance of the acquisition vehicle or vehicles (*provided* that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof, shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in **Section 10.01** of this Agreement),

(C) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action and

(D) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

Section 9.11 Collateral and Guaranty Matters.

(a) Each Agent, each Lender (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank) and each other Secured Party irrevocably authorizes the Administrative Agent and Collateral Agent to be the agent for and representative of the Lenders with respect to the Guaranty, the Collateral and the Collateral Documents and agrees that, notwithstanding anything to the contrary in any Loan Document:

(i) Liens on any property granted to or held by an Agent or in favor of any Secured Party under any Loan Document will be automatically and immediately released, and each Secured Party irrevocably authorizes and directs the Agents to enter into, and each Secured Party and Agent agrees that it will enter into, the necessary or advisable documents requested by the Borrower and associated therewith, upon the occurrence of any of the following events (each, a “**Lien Release Event**”),

(a) the payment in full in cash of all the Obligations (other than Cash Management Obligations, Obligations in respect of Secured Hedge Agreements and contingent obligations in respect of which no claim has been made);

(b) a transfer of the property subject to such Lien as part of, or in connection with, a transaction that is permitted (or not prohibited) by the terms of the Loan Documents to any Person that is not a Loan Party;

(c) with respect to property owned by any Guarantor or with respect to which any Guarantor has rights (with respect to the rights of such Guarantor), the release of such Guarantor from its obligations under its Guaranty pursuant to a Guaranty Release Event;

(d) the approval, authorization or ratification of the release of such Lien by the Required Lenders or such percentage as may be required pursuant to **Section 10.01**;

(e) such property becoming an Excluded Asset, Excluded Equity Interest or an asset owned by an Excluded Subsidiary or with respect to which an Excluded Subsidiary (and no other Loan Party) has ownership rights;

(f) as to the assets owned by such Excluded Subsidiary (or with respect to which an Excluded Subsidiary (and no other Loan Party) has rights), upon any Person becoming an Excluded Subsidiary (other than pursuant to **clause (a)** of the definition thereof, to the extent a result of the transfer of Equity Interests in such Subsidiary Guarantor to an Affiliate of the Borrower); and/or

(g) any such Securitization Assets becoming subject to a Securitization Financing to the extent required by the terms of such Securitization Financing;

(h) upon the request of the Borrower (such request, the “**Release/Subordination Event**”) it will release or subordinate any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(d);

(i) a Subsidiary Guarantor will be automatically and immediately released from its obligations under the Guaranty upon

(A) such Subsidiary Guarantor ceasing to be a Subsidiary of the Borrower,

(B) such Subsidiary Guarantor ceasing to be a Material Subsidiary, or

(C) such Subsidiary Guarantor becoming an Excluded Subsidiary

(other than pursuant to **clause (a)** of the definition thereof, to the extent a result of the transfer of Equity Interests in such Subsidiary Guarantor to an Affiliate of the Borrower) as a result of a transaction permitted hereunder (**clauses (A)-(C)**, each a “**Guaranty Release Event**”), and each Secured Party irrevocably authorizes and directs the Agents to enter into, and each Agent agrees it will enter into, the necessary and advisable documents requested by the Borrower to (1) release (or acknowledge the release of) such Subsidiary Guarantor from its obligations under the Guaranty and (2) release (or acknowledge the release of) any Liens granted by such Subsidiary or Liens on the Equity Interests of such Subsidiary;

(j) the Administrative Agent and the Collateral Agent will exclusively exercise the rights and remedies under the Loan Documents, and neither the Lenders nor any other Secured Party will exercise such rights and remedies (other than the Required Lenders exercising such rights and remedies through the Administrative Agent); *provided* that the foregoing shall not preclude any Lender from exercising any right of set-off in accordance with the provisions of **Section 10.09**, enforcing compliance with the provisions set forth in **Section 10.01(b)** or from exercising rights and remedies (other than the enforcement of Collateral) with respect to any payment default after the occurrence of the Maturity Date with respect to any Loans made by it or filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and

(ii) the Administrative Agent and Collateral Agent shall, and the Lenders and other Secured Parties irrevocably authorize and instruct the Administrative Agent and Collateral Agent to, from time to time on and after the Closing Date, without any further consent of any Lender counterparty to any Cash Management Obligation or Secured Hedge Agreement or other Secured Party,

(i) enter into any Intercreditor Agreement or other intercreditor agreement with the collateral agent or other representative of the holders of Indebtedness that is secured by a Lien on Collateral that is not prohibited (including with respect to priority) under this Agreement or

(ii) subordinate any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document to the holder of any Permitted Lien on such property in respect of any Indebtedness that has priority as a matter of law or is expressly permitted hereunder to be incurred and secured on a priority lien basis to the Liens securing Obligations.

(b) Each Agent, each Lender and each other Secured Party agrees that it will promptly take such action and execute any such documents in a form reasonably satisfactory to the Administrative Agent as may be reasonably requested by the Borrower (such actions and such execution, the “**Release Actions**”), at the Borrower’s sole cost and expense, in connection with a Lien Release Event, Release/Subordination Event or Guaranty Release Event and that such actions are not discretionary. Without limitation, the Release Actions may include, as applicable,

(a) executing (if required) and delivering to the Loan Parties (or any designee of the Loan Parties) any such lien releases, discharges of security interests, pledges and guarantees and other similar discharge or release documents, as are reasonably requested by a Loan Party in connection with the release, as of record, of the Liens (and all notices of security interests and Liens previously filed) the subject of a Lien Release Event or Release/Subordination Event or the release of any applicable Guarantee in connection with a Guaranty Release Event and

(b) delivering to the Loan Parties (or any designee of the Loan Parties) all instruments evidencing pledged debt and all equity certificates and any other collateral previously delivered in physical form by the Loan Parties to a Secured Party.

In connection with any Lien Release Event, Release/Subordination Event, Guaranty Release Event or Release Action, each of the Collateral Agent, the Administrative Agent and each Secured Party shall be entitled to rely and shall rely exclusively on an officer's certificate of the Borrower (the "**Release Certificate**") confirming that

(a) such Lien Release Event, Release/Subordination Event or a Guaranty Release Event, as applicable, has occurred or will upon consummation of one or more identified transactions (an "**Identified Transaction**") occur,

(b) the conditions to any such Lien Release Event, Release/Subordination Event or Guaranty Release Event have occurred or will occur upon consummation of an Identified Transaction, and

(c) that any such Identified Transaction is permitted by (or not prohibited by) the Loan Documents.

The Collateral Agent and the Administrative Agent will be fully exculpated from any liability and shall be fully protected and shall not have any liability whatsoever to any Secured Party or any other Person as a result of such reliance or the consummation of any Release Action. The Borrower shall indemnify, defend and hold harmless the Administrative Agent, any Supplemental Administrative Agent, the Collateral Agent, and their respective Affiliates, directors, officers, directors, employees, agents, advisors, partners, trustees, controlling persons, and other representatives of each of the foregoing (collectively, the "**Section 9.11 Indemnitees**") from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including Attorney Costs to the extent set forth in Section 10.05) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Section 9.11 Indemnitee in any way relating to or arising out of or in connection with any Release Action, Lien Release Event, Release/Subordination Event or Guaranty Release Event (regardless of whether any Section 9.11 Indemnitee is party thereto or such claim, litigation, investigation or proceeding is by or against the Borrower or any Affiliate thereof). A Release Certificate may be delivered in advance of the consummation of any applicable Identified Transaction.

Each Lender and each Secured Party irrevocably authorizes and irrevocably directs the Collateral Agent and the Administrative Agent to take the Release Actions and consents to reliance on the Release Certificate. The Secured Parties agree not to give any Agent any instruction or direction inconsistent with the provisions of this **Section 9.11**. Neither the Administrative Agent nor the Collateral Agent shall be responsible for, or have a duty to ascertain or inquire into, any statement in a Release Certificate, the compliance of any Identified Transaction with the terms of a Loan Document, any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or contained in any certificate prepared or delivered by any Loan Party in connection with the Collateral or compliance with the terms set forth above or in a Loan Document, nor shall the

Administrative Agent or Collateral Agent be responsible or liable for any failure to monitor or maintain any portion of the Collateral or validity, perfection or priority of any lien thereon.

Each relevant Agent, each Lender and each other Secured Party agrees that following its receipt of an applicable Release Certificate it will take all Release Actions promptly upon request of the Borrower and in any event not later than the date that is (i) the fifth Business Day following the date Release Certificate is delivered to the Administrative Agent and (ii) the date any applicable Identified Transaction described in the Release Certificate is consummated (such latter date, the “**Release Date**”). Notwithstanding the foregoing, nothing set forth in this **Section 9.11** shall relieve or release any Loan Party from any liability resulting from a Default or Event of Default that results from an Identified Transaction or misrepresentation or omission in any Release Certificate.

(c) Anything contained in any of the Loan Documents to the contrary notwithstanding, each Agent, each Lender and each Secured Party hereby agree that:

(i) no Lender or other Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty or any other Loan Document, it being understood and agreed that all powers, rights and remedies hereunder and under any of the Loan Documents may be exercised solely by the Administrative Agent or the Collateral Agent, as applicable, for the benefit of the Lenders in accordance with the terms hereof and thereof, and all powers, rights and remedies under the Collateral Documents may be exercised solely by the Collateral Agent for the benefit of the Lenders in accordance with the terms thereof;

(ii) in the event of a foreclosure or similar enforcement action by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition (including, without limitation, pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code or other Debtor Relief Law), the Collateral Agent or the Administrative Agent (except with respect to a “credit bid” pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code or other Debtor Relief Law) may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition, and the Collateral Agent, as agent for and representative of Lenders (but not any Lender or Lenders in its or their respective individual capacities), shall be entitled, upon instructions from the Required Lenders, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale or disposition, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Collateral Agent at such sale or other disposition;

(iii) no provision of any Loan Documents shall require the creation, perfection or maintenance of pledges of or security interests in, or the obtaining of title insurance or abstracts with respect to, any Excluded Assets, Excluded Equity Interests and any other particular assets, if and for so long as, in the reasonable judgment of the Collateral Agent, the cost of creating, perfecting or maintaining such pledges or security interests in such other particular assets or obtaining title insurance or abstracts in respect of such other particular assets is excessive in view of the fair market value of such assets or the practical benefit to the Lenders afforded thereby; and

(iv) the Collateral Agent may grant extensions of time for the creation or perfection of security interests in or the obtaining of title insurance and surveys with respect to particular assets (including extensions beyond the Closing Date for the creation or perfection of security interests in the assets of the Loan Parties on such date) where it reasonably determines, in consultation with the Borrower, that creation or perfection cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement or the Collateral Documents.

Section 9.12 Appointment of Supplemental Administrative Agents.

(a) It is the purpose of this Agreement and the other Loan Documents that there shall be no violation of any Law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in case of litigation under this Agreement or any of the other Loan Documents, and in particular in case of the enforcement of any of the Loan Documents, or in case the Administrative Agent deems that by reason of any present or future Law of any jurisdiction it may not exercise any of the rights, powers or remedies granted herein or in any of the other Loan Documents or take any other action which may be desirable or necessary in connection therewith, the Administrative Agent is hereby authorized to appoint an additional individual or institution selected by the Administrative Agent in its sole discretion as a separate trustee, co-trustee, administrative agent, collateral agent, administrative sub-agent or administrative co-agent (any such additional individual or institution being referred to herein individually, as a “**Supplemental Administrative Agent**” and, collectively, as “**Supplemental Administrative Agents**”).

(b) In the event that the Administrative Agent appoints a Supplemental Administrative Agent with respect to any Collateral,

(i) each and every right, power, privilege or duty expressed or intended by this Agreement or any of the other Loan Documents to be exercised by or vested in or conveyed to the Administrative Agent with respect to such Collateral shall be exercisable by and vest in such Supplemental Administrative Agent to the extent, and only to the extent, necessary to enable such Supplemental Administrative Agent to exercise such rights, powers and privileges with respect to such Collateral and to perform such duties with respect to such Collateral, and every covenant and obligation contained in the Loan Documents and necessary to the exercise or performance thereof by such Supplemental Administrative Agent shall run to and be enforceable by either the Administrative Agent or such Supplemental Administrative Agent, and

(ii) the provisions of this **Article IX, Section 10.04** and **Section 10.05** that refer to the Administrative Agent shall inure to the benefit of such Supplemental Administrative Agent and all references therein to the Administrative Agent shall be deemed to be references to the Administrative Agent and/or such Supplemental Administrative Agent, as the context may require.

(c) Should any instrument in writing from any Loan Party be required by any Supplemental Administrative Agent so appointed by the Administrative Agent for more fully and certainly vesting in and confirming to him or it such rights, powers, privileges and duties, the

Borrower shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments promptly upon request by the Administrative Agent. In case any Supplemental Administrative Agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Administrative Agent, to the extent permitted by Law, shall vest in and be exercised by the Administrative Agent until the appointment of a new Supplemental Administrative Agent.

Section 9.13 Intercreditor Agreements. Notwithstanding anything to the contrary set forth in any Loan Document, to the extent the Administrative Agent enters into any Intercreditor Agreement, this Agreement will be subject to the terms and provisions of such Intercreditor Agreement. In the event of any inconsistency between the provisions of this Agreement or any other Loan Document and any such Intercreditor Agreement, the provisions of such Intercreditor Agreement govern and control. The Lenders acknowledge and agree that each Agent is (i) authorized and instructed to enter into any Intercreditor Agreement to be executed on the Closing Date with respect to Indebtedness incurred on the Closing Date pursuant to **Section 7.03(b)(i)(A)** and **7.03(b)(ii)** and (ii) authorized to, and each Agent agrees that, with respect to any secured Indebtedness, upon request by the Borrower, it shall, enter into an Intercreditor Agreement contemplated hereunder with respect to such Indebtedness with the collateral agent or other Debt Representative of the holders of such Indebtedness unless such Indebtedness and any related Liens (including the priority of such Liens) are prohibited by **Section 7.01**, **Section 7.03** or any other provision of this Agreement. The Lenders hereby authorize and instruct the Administrative Agent to:

- (a) enter into any such Intercreditor Agreement executed on the Closing Date or any such other Intercreditor Agreement,
- (b) bind the Lenders on the terms set forth in any such Intercreditor Agreement and
- (c) perform and observe its obligations under any such Intercreditor Agreement.

The Agents and each Secured Party agree that the Agents shall be entitled to rely and shall rely exclusively on an officer's certificate of the Borrower in determining whether it is authorized or instructed to enter into an Intercreditor Agreement pursuant to this Section. Each Secured Party covenants and agrees not to give the Collateral Agent or Administrative Agent any instruction that is not consistent with the provisions of this **Section 9.13**.

Section 9.14 Cash Management Agreements and Secured Hedge Agreements. Except as otherwise expressly set forth herein or in any Guaranty or any Collateral Document, no Cash Management Bank or Hedge Bank that obtains the benefits of **Section 8.03**, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral or any Guaranty (including the release or impairment of any Collateral or Guaranty) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this **Article IX** to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been

made with respect to, Cash Management Obligations or Obligations arising under Secured Hedge Agreements unless the Administrative Agent has received written notice of such Cash Management Obligations or such Obligations arising under Secured Hedge Agreements, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

Section 9.15 Withholding Taxes. To the extent required by any applicable Law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding tax. If any Governmental Authority asserts a claim that the Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify the Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding tax ineffective or for any other reason, or if the Administrative Agent reasonably determines that a payment was made to a Lender pursuant to this Agreement without deduction of applicable withholding tax from such payment, such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred.

Section 9.16 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “**Qualified Professional Asset Manager**” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of

the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

ARTICLE X. MISCELLANEOUS

Section 10.01 Amendments, Waivers, Etc.

(a) **General Rule.** Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (or the Administrative Agent on behalf of the Required Lenders) and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) **Specific Lender Approvals.** Notwithstanding the provisions of Section 10.01(a), no such amendment, waiver or consent shall:

(i) extend or increase the Commitment of any Lender, without the written consent of such Lender, it being understood that the waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender; or

(ii) postpone any date scheduled for, or reduce the amount of, any payment of principal, interest or fees with respect to any Loan without the written consent of each Lender entitled to such payment of principal, interest or fees it being understood that

(A) the waiver of (or amendment to the terms of) any mandatory prepayment of the Loans shall not constitute a postponement of any date scheduled for the payment of principal, interest or fees and

(B) a waiver of the waiver of any Default (other than a Default under **Section 8.01(a)**) or mandatory reduction of the Commitments shall not constitute a postponement of any date scheduled for, or a reduction in the amount of, any payment of principal, interest or fees; or

(iii) reduce the principal of, or the rate of interest specified herein on, any Loan or any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender entitled to such principal, interest or Person entitled to such fee or other amount, as applicable, it being understood that

(A) any change to the definition of First Lien Net Leverage Ratio or in the component definitions thereof shall not constitute a reduction in the rate of interest specified herein or any fees or other amounts payable hereunder or under any other Loan Document and

(B) only the consent of the Required Lenders shall be necessary to amend the definition of “**Default Rate**” and with respect to any Facility, only the consent of the Required Facility Lenders shall be necessary to waive any obligation of the Borrower to pay interest at the Default Rate with respect to such Facility; or

(iv) change any provision of this **Section 10.01** (except as expressly set forth herein) or the definition of “**Required Lenders**,” “**Required Facility Lenders**” or “**Pro Rata Share**” or any other provision specifying the number of Lenders or portion of the Loans or Commitments required to take any action under the Loan Documents, without the written consent of each Lender; or

(v) (A) other than in connection with a transfer or other transaction permitted (or not prohibited) under the Loan Documents, release all or substantially all of the Collateral in any transaction or series of related transactions or (B) prior to the occurrence of an Event of Default under **Section 8.01(f)** (with respect to the Borrower), (1) subordinate the Obligations to any other obligations or (2) subordinate the Lien securing the Obligations to Liens securing debt for borrowed money (or guarantees thereof) (other than in respect of the Liens of the type incurred pursuant to **Section 7.01(d)** on the date hereof), in each case, without the written consent of each Lender; or

(vi) other than in connection with a transfer or other transaction permitted (or not prohibited) under the Loan Documents, release all or substantially all of the aggregate value of the Guaranty or all or substantially all of the Guarantors, without the written consent of each Lender; or

(vii) modify **Section 2.12** or **Section 8.03**, including in a manner that would by its terms alter the pro rata sharing of payments required thereby, without the written consent of each Lender directly and adversely affected thereby.

(c) **Other Approval Requirements.** Notwithstanding the provisions of **Section 10.01(a)** or **Section 10.01(b)**;

(i) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, adversely affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document;

(ii) no amendment, waiver or consent shall, unless in writing and signed by the Collateral Agent in addition to the Lenders required above, adversely affect the rights or duties of, or any fees or other amounts payable to, the Collateral Agent under this Agreement or any other Loan Document;

(iii) **Section 10.07(g)** may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification; and

(iv) the consent of the Required Facility Lenders shall be required with respect to any amendment that by its terms adversely affects the rights of Lenders under such Facility in respect of payments hereunder in a manner different than such amendment affects other Facilities;

(d) **Intercreditor Agreement.** No Lender consent is required to effect any amendment or supplement to any Intercreditor Agreement or any other intercreditor agreement that is,

(i) for the purpose of adding the holders of Pari Passu Lien Debt, Junior Lien Debt, Incremental Equivalent Debt, Permitted Pari Passu Secured Refinancing Debt or Permitted Junior Secured Refinancing Debt (or a Debt Representative with respect to any Indebtedness with respect to which it is a representative or agent) as parties thereto, as expressly contemplated by the terms of such intercreditor agreement (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing), or

(ii) expressly contemplated by any such Intercreditor Agreement or any other intercreditor agreement;

(e) **Additional Facilities and Replacement Loans.**

(i) **Additional Facilities.** Subject to **clause (b)** above, his Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower:

(I) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Loans and the accrued interest and fees in respect thereof and

(II) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders.

(ii) **Replacement Loans.** The Loan Documents may be amended with the written consent of the Borrower and the Lenders providing Replacement Loans (as defined below) to permit the refinancing, replacement or exchange of all outstanding Term Loans of any Class (“**Refinanced Loans**”) with replacement term loans (“**Replacement Loans**”) hereunder; *provided* that,

(a) the aggregate principal amount of such Replacement Loans shall not exceed the aggregate principal amount of such Refinanced Loans *plus* (1) the amount of all unpaid, accrued, or capitalized interest, penalties, premiums (including tender premiums), and other amounts payable with respect to any such Refinanced Loans and (2) underwriting discounts, fees, commissions, costs, expenses and other amounts payable with respect to such Replacement Loans;

(b) the Weighted Average Life to Maturity of such Replacement Loans shall not be shorter than the remaining Weighted Average Life to Maturity of such Refinanced Loans at the time of such refinancing; and

(c) no amendment, modification or waiver of this Agreement or any Loan Document altering the ratable treatment of Obligations arising under Secured Hedge Agreements or under Cash Management Obligations resulting in such Obligations being junior in right of payment to principal on the Loans or resulting in Obligations owing to any Hedge Bank or any Cash Management Obligations becoming unsecured (other than releases of Liens permitted in accordance with the terms hereof), in each case in a manner materially adverse to any Hedge Bank or any Cash Management Bank, shall be effective without the written consent of such Hedge Bank or such Cash Management Bank, as applicable.

(f) Benchmark Replacement Setting.

(i) **Benchmark Replacement.** Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event with respect to any Benchmark, the Administrative Agent and the Borrower may amend this Agreement to replace such Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the Administrative Agent has posted such proposed amendment to all affected Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section (f) will occur prior to the applicable Benchmark Transition Start Date.

(ii) **Benchmark Replacement Conforming Changes.** In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming

Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to this Section (f) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section (f), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section (f).

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if any then-current Benchmark is a term rate (including the Term SOFR Reference Rate or EURIBOR) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) Benchmark Unavailability Period. Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Benchmark for Dollar, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Term Benchmark Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During a Benchmark Unavailability Period or at any time that a tenor for the

then-current Benchmark is not an Available Tenor, the component of Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Base Rate. Upon the commencement of a Benchmark Unavailability Period with respect to a Benchmark for any currency other than Dollar, the Borrower may revoke any pending request for such Borrowing of, conversion to or continuation of such Loans, in each case, to be made, converted or continued during any Benchmark Unavailability Period denominated in the applicable Currency and, failing that, if applicable, then such request shall be ineffective and any outstanding affected Loans, in each case, denominated in an Alternative Currency, at the Borrower's election, shall either (I) be converted into Base Rate denominated in Dollars (in an amount equal to the Dollar Amount of such Alternative Currency) or (II) be prepaid in full immediately or at the end of the applicable Interest Period, as applicable.

(vi) Disclaimer. The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, EURIBOR Rate, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, EURIBOR Rate or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, EURIBOR Rate, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, EURIBOR Rate or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

(g) **Certain Amendments to Guaranty and Collateral Documents.** In addition, notwithstanding anything to the contrary contained in this **Section 10.01**, the Guaranty, the Collateral Documents and related documents executed by the Borrower and/or the Restricted Subsidiaries in connection with this Agreement and the other Loan Documents may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (A) to comply with local Law or advice of local counsel, (B) to cure ambiguities

or defects (as reasonably determined by the Administrative Agent and the Borrower) or (C) to cause such Guaranty, Collateral Document or other document to be consistent with this Agreement and the other Loan Documents.

(h) **Defaulting Lenders and Disqualified Lenders.** Notwithstanding any to the contrary here, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders, the Required Lenders, the Required Facility Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders, Disqualified Lender or Net Short Lender), except that (A) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Defaulting Lender and (B) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender. Disqualified Lenders and Net Short Lenders shall be subject to the provisions of **Section 10.27**.

Section 10.02 Notices and Other Communications; Facsimile Copies.

(a) **General.** Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in **Section 10.02(b)**), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

- (i) if to the Borrower, the Collateral Agent or the Administrative Agent, to the address, fax number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and
- (ii) if to any other Lender, to the address, fax number, electronic mail addresses or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by fax shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient); and notices deposited in the United States mail with postage prepaid and properly addressed shall be deemed to have been given within three Business Days of such deposit; ***provided*** that no notice to any Agent shall be effective until received by such Agent. Notices and other communications delivered through electronic communications to the extent provided in **Section 10.02(b)** shall be effective as provided in such **subsection (b)**.

(b) **Electronic Communication.** Notices and other communications to any Agent and the Lenders may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites, including the Platform) pursuant to procedures approved by the Administrative Agent; ***provided*** that the foregoing shall not apply to notices to any Agent, or

Lender pursuant to **Article II** if such Person, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; **provided** that approval of such procedures may be limited to particular notices or communications.

(c) **Receipt.** Unless the Administrative Agent otherwise prescribes,

(i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), **provided** that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and

(ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing **clause (i)** of notification that such notice or communication is available and identifying the website address therefor.

(d) **Risks of Electronic Communications.** Each Loan Party understands that the distribution of materials through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the bad faith, willful misconduct or gross negligence of the Administrative Agent or any Lender as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(e) **The Platform.** THE PLATFORM IS PROVIDED 'AS IS' AND 'AS AVAILABLE.' THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS OR IN THE PLATFORM. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Agent-Related Persons or any Lead Arranger (collectively, the "**Agent Parties**") have any liability to the Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; **provided however**, that in no event shall any Agent Party have any liability to the Borrower, any

Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages). Each Loan Party, each Lender and each Agent agrees that the Administrative Agent may, but shall not be obligated to, store any Borrower Materials on the Platform in accordance with the Administrative Agent's customary document retention procedures and policies.

(f) **Change of Address.** Each of the Borrower and the Administrative Agent may change its address, fax or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, fax or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent and the Collateral Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, fax number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(g) **Reliance by the Administrative Agent and the Lenders.** The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including Committed Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording. The Borrower shall indemnify the Administrative Agent and the Lenders and each Agent-Related Person from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower in the absence of gross negligence, bad faith or willful misconduct as determined in a final and non-appealable judgment by a court of competent jurisdiction.

(h) **Private-Side Information Contacts.** Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “**Private-Side Information**” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States federal and state securities Laws, to make reference to information that is not made available through the “**Public-Side Information**” portion of the Platform and that may contain Private-Side Information with respect to the Borrower, its Subsidiaries or their respective securities for purposes of United States federal or state securities laws. In the event that any Public Lender has determined for itself to not access any information disclosed through the Platform or otherwise, such Public Lender acknowledges that (i) other Lenders may have availed themselves of such information and (ii) neither the Borrower nor the Administrative Agent has (A) any responsibility for such Public Lender's decision to limit the scope of the information it has obtained in connection with this Agreement and the other Loan Documents and (B) any duty to disclose such information to such Public Lender or to use such information on behalf of such Public Lender, and shall not be liable for the failure to so disclose or use, such information.

Section 10.03 **No Waiver; Cumulative Remedies.** No forbearance, failure or delay by any Lender or any Agent to exercise, and no delay by any such Person in exercising, any right,

remedy, power or privilege hereunder or under any other Loan Document shall impair such right, remedy, power or privilege or operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and independent of any rights, remedies, powers and privileges provided by Law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Borrower shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with **Article VIII** for the benefit of all the Lenders; *provided* that the foregoing shall not prohibit

- (i) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents,
- (ii) [reserved],
- (iii) any Lender from exercising setoff rights in accordance with Section 10.09 (subject to the terms of Section 2.12) or
- (iv) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to the Borrower under any Debtor Relief Law;

provided further that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (A) the Required Lenders shall have the rights otherwise provided to the Administrative Agent pursuant to **Article VIII** and (B) in addition to the matters set forth in **clauses (ii), (iii) and (iv)** of the preceding proviso and subject to **Section 2.12**, any Lender may, with the consent of the Required Lenders, enforce any rights or remedies available to it and as authorized by the Required Lenders.

Section 10.04 **Attorney Costs and Expenses.** The Borrower agrees:

- (a) if the Closing Date occurs, to pay or reimburse the Administrative Agent, the Collateral Agent, the Lead Arranger, the Supplemental Administrative Agents and the Lenders for all reasonable and documented in reasonable detail out-of-pocket expenses incurred on or after the Closing Date in connection with the preparation, execution, delivery and administration of this Agreement and the other Loan Documents and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), limited, in the case of legal fees and expenses, to the Attorney Costs of one primary counsel and, if reasonably necessary, one local counsel in each relevant jurisdiction material to the interests of the Lenders taken as a whole (which may be a single local counsel acting in multiple material jurisdictions), and

(b) to pay or reimburse the Administrative Agent, the Collateral Agent, the Lead Arrangers, the Supplemental Administrative Agents and the Lenders for all reasonable and documented in reasonable detail out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law) and all Attorney Costs of one counsel to the Administrative Agent, the Collateral Agent, the Lead Arranger, the Supplemental Administrative Agents and the Lenders taken as a whole (and, if reasonably necessary, one local counsel in any relevant material jurisdiction (which may be a single local counsel acting in multiple material jurisdictions) and, solely in the event of an actual or potential conflict of interest between the Administrative Agent, the Collateral Agent, the Lead Arrangers, the Supplemental Administrative Agents and the Lenders, where the Person or Persons affected by such conflict of interest inform the Borrower in writing of such conflict of interest, one additional counsel in each relevant material jurisdiction to each group of affected Persons similarly situated taken as a whole).

The agreements in this **Section 10.04** shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under this **Section 10.04** shall be paid promptly following receipt by the Borrower of an invoice relating thereto setting forth such expenses in reasonable detail. If the Borrower fails to pay when due any costs, expenses or other amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of the Borrower by the Administrative Agent in its sole discretion. Expenses shall be deemed to be documented in reasonable detail only if they provide the detail required to enable the Borrower, acting in good faith, to determine that such expenses relate to the activities with respect to which reimbursement is required hereunder. The Borrower and each other Loan Party hereby acknowledge that the Administrative Agent and/or any Lender may receive a benefit, including a discount, credit or other accommodation, from any of such counsel based on the fees such counsel may receive on account of their relationship with the Administrative Agent and/or such Lender, including fees paid pursuant to this Agreement or any other Loan Document.

Section 10.05 Indemnification by the Borrower. The Borrower shall indemnify and hold harmless the Administrative Agent, any Supplemental Administrative Agent, the Collateral Agent, each Lender, each Lead Arranger, each Joint Bookrunner and their respective Affiliates, directors, officers, directors, employees, agents, advisors, partners, trustees, controlling persons, and other representatives of each of the foregoing (collectively, the “**Indemnitees**”) from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (but limited, in the case of legal fees and expenses, to the Attorney Costs of one counsel to all Indemnitees taken as a whole and, if reasonably necessary, a single local counsel for all Indemnitees taken as a whole in each relevant jurisdiction that is material to the interest of such Indemnitees (which may be a single local counsel acting in multiple material jurisdictions), and solely in the case of an actual or potential conflict of interest between Indemnitees (where the Indemnitee affected by such conflict of interest informs the Borrower in writing of such conflict of interest), one additional counsel in each relevant jurisdiction to each group of affected Indemnitees similarly situated taken as a whole),

(a) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby (including the reliance in good faith by any Indemnitee on any notice purportedly given by or on behalf of the Borrower or any Loan Party),

(b) the Transaction,

(c) any Commitment, Loan or the use or proposed use of the proceeds therefrom,

(d) any actual or alleged presence or release of, or exposure to, any Hazardous Materials on or from any property currently or formerly owned or operated by the Borrower or any other Loan Party, or any Environmental Claim or Environmental Liability arising out of the activities or operations of or otherwise related to the Borrower or any other Loan Party, or

(e) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnitee is a party thereto or such claim, litigation, investigation or proceeding is by or against the Borrower or any Affiliate thereof;

(all the foregoing, collectively, the “**Indemnified Liabilities**”); *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that any such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements resulted from

(i) the gross negligence, bad faith or willful misconduct of such Indemnitee or of any Related Indemnified Person of such Indemnitee,

(ii) other than with respect to the Administrative Agent, the Collateral Agent and each Agent-Related Person, a material breach of any obligations of such Indemnitee under any Loan Document by such Indemnitee or Related Indemnified Person, or

(iii) any dispute solely among Indemnitees or of any Related Indemnified Person of such Indemnitee other than any claims against an Indemnitee in its capacity or in fulfilling its role as the Administrative Agent, the Collateral Agent or a Lead Arranger (or other Agent role) under the Facility and other than any claims arising out of any act or omission of the Borrower or any of its Affiliates.

To the extent that the undertakings to indemnify and hold harmless set forth in this **Section 10.05** may be unenforceable in whole or in part because they are violative of any applicable law or public policy, the Borrower shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through Merrill Datasite One, Intralinks/Intra Agency, Syndtrak or other similar information transmission systems in connection with this Agreement, except to the extent resulting from the willful misconduct, bad faith or gross

negligence of such Indemnitee or any Related Indemnified Person (as determined by a final and non-appealable judgment of a court of competent jurisdiction), nor shall any Indemnitee or any Loan Party have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date) (other than, in the case of any Loan Party, in respect of any such damages incurred or paid by an Indemnitee to a third party). In the case of an investigation, litigation or other proceeding to which the indemnity in this **Section 10.05** applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents is consummated. All amounts due under this **Section 10.05** (after the determination of a court of competent jurisdiction, if required pursuant to the terms of this **Section 10.05**) shall be paid within twenty Business Days after written demand therefor. The agreements in this **Section 10.05** shall survive the resignation of the Administrative Agent or the Collateral Agent, replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations. This **Section 10.05** shall not apply to Taxes, except it shall apply to any Taxes that represent losses, claims, damages, etc. arising from a non-Tax claim (including a value added tax or similar tax charged with respect to the supply of legal or other services) without duplication of any other indemnification or payments made by the Loan Parties. For the avoidance of doubt and without limiting the foregoing obligations in any manner, none of the Sponsors, nor any of their respective Affiliates, nor any other Affiliate of the Borrower (other than its Restricted Subsidiaries) shall have any liability under this Section 10.05, and each is hereby released from any liability arising from the Transactions or any other transaction explicitly permitted (or not prohibited) by the Loan Documents.

Section 10.06 Marshaling; Payments Set Aside. None of the Administrative Agent, the Collateral Agent or any Lender shall be under any obligation to marshal any assets in favor of the Loan Parties or any other Person or against or in payment of any or all of the Obligations. To the extent that any payment by or on behalf of the Borrower is made to any Agent or any Lender (or to the Administrative Agent, on behalf of any Lender), or any Agent or any Lender enforces any security interests or exercises its right of setoff, and such payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential or a transfer at undervalue, set aside and/or required (including pursuant to any settlement entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver, interim receiver, receiver and manager, monitor or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, *plus* interest thereon from the date of such demand to the date such payment is made at a rate *per annum* equal to the Federal Funds Rate from time to time in effect.

Section 10.07 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not, except as permitted by Section 7.04, assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except,

(i) to an assignee in accordance with the provisions of Section 10.07(b);

(ii) by way of participation in accordance with the provisions of Section 10.07(d) of this Section;

(iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.07(f); or

(iv) to an SPC in accordance with the provisions of Section 10.07(g) (and any other attempted assignment or transfer by any party hereto shall be null and void).

Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 10.07(d) and, to the extent expressly contemplated hereby, the Agent-Related Persons of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lenders.** Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement, including all or a portion of its Commitment and the Loans at the time owing to it; *provided* that any such assignment shall be subject to the following conditions:

(i) ***Minimum Amounts.***

(a) in the case of an assignment of the entire remaining amount of the assigning Lender's Term Loans at the time held by it, or in the case of an assignment to a Lender, an Affiliate or branch of a Lender or an Approved Fund, no minimum amount need be assigned; and

(b) with respect to any assignment not described in Section 10.07(b)(i)(A), such assignment shall be in an aggregate amount of not less than with respect to the assigning Lender's Term Loans, \$1,000,000, unless in each case, each of the Administrative Agent, and so long as no Specified Event of Default has occurred and is continuing at the time of such assignment, the Borrower otherwise consents (such consent not to be unreasonably withheld or delayed).

(ii) ***Proportionate Amounts.*** Each partial assignment of Term Loans shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Term Loans assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis.

(iii) **Required Consents.** No consent shall be required for any assignment, except to the extent required by Section 10.07(b)(i)(B) and the following:

(a) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) a Specified Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is made with respect to Term Loans to a Lender, an Affiliate or branch of a Lender or an Approved Fund; **provided however**, that the Borrower shall be deemed to have consented to any assignment of Term Loans if the Borrower does not respond within five Business Days of a written request for its consent with respect to such assignment; and

(b) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate or branch of such Lender or an Approved Fund; **provided however**, that the consent of the Administrative Agent shall not be required for any assignment to an Affiliated Lender or a Person that upon effectiveness of an assignment would be an Affiliated Lender, except for the separate consent rights of the Administrative Agent pursuant to Section 10.07(h)(v).

(iv) **Assignment and Assumption.** The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; **provided** that (A) the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment and (B) no processing and recordation fee shall be payable in connection with an assignments by or to a Lead Arranger or its Affiliates or branches. The Eligible Assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and any tax forms required under Sections 3.01(b), (c), (d) and (e), as applicable. Upon receipt of the processing and recordation fee and any written consent to assignment required by Section 10.07(b)(iii), the Administrative Agent shall promptly accept such Assignment and Assumption and record the information contained therein in the Register.

(v) **No Assignments to Certain Persons.** No such assignment shall be made,

(a) to the Borrower or any of the Borrower's Restricted Subsidiaries except as permitted under Section 2.04(a)(iv) or under Section 10.07(k);

(b) subject to Section 10.07(h) below, any of the Borrower's Affiliates (other than the Borrower or any of its Restricted Subsidiaries);

(c) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing persons described in this clause;

(d) to a natural person; or

(e) to a Disqualified Lender (subject to the Disqualified Lender Provisions) or a Net Short Lender or Lender who has become a Disqualified Lender (subject to the Disqualified Lender Provisions) or a Net Short Lender.

To the extent that any assignment is purported to be made to a Disqualified Lender or a Net Short Lender, such transaction shall be subject to the applicable provisions of **Section 10.27**. Lenders shall be entitled to rely conclusively on any Net Short Representation made (or deemed made) to it in any agreement or instrument documenting or otherwise evidencing such assignment and shall have no duty to inquire as to or investigate the accuracy of any Net Short Representation therein or provided in connection with such assignment.

(vi) **Defaulting Lenders Assignments.** In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or sub-participations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent and each other Lender hereunder (and interest accrued thereon), and (B) acquire (and fund as appropriate) its full Pro Rata Share of all Loans. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 10.07(c) (and, in the case of an Affiliated Lender or a Person that, after giving effect to such assignment, would become an Affiliated Lender, subject to the requirements of Section 10.07(h)), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement (except in the case of an assignment to or purchase by the Borrower or any of its Subsidiaries) and, to the extent of the interest assigned by such Assignment and Assumption and as permitted by this Section 10.07, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, and the surrender by the assigning Lender of its applicable Notes, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with

this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.07(d).

(c) **Register.** The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts and stated interest of the Loans owing to each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower or any Lender (but only, in the case of a Lender at the Administrative Agent's Office and with respect to any entry relating to such Lender's Commitments, Loans and other Obligations), at any reasonable time and from time to time upon reasonable prior notice. This Section 10.07(c) shall be construed so that all Loans are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related United States Treasury regulations (or any other relevant or successor provisions of the Code or of such United States Treasury regulations).

(d) **Participations.** Any Lender may at any time, without the consent of, or notice to, the Borrower, the Administrative Agent or any other Person sell participations (a "**Participation**") to any Person (other than to (1) a natural person, a Disqualified Lender (subject to the Disqualified Lender Provisions) or a Net Short Lender, (2) the Borrower or any of the Borrower's Affiliates or Subsidiaries or (3) any Person described in the proviso to the definition of "**Eligible Assignee**") (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans, and other Obligations owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or any other Loan Document; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in Section 10.01(b)(i) or Section 10.01(b)(ii) that directly and adversely affects such Participant. Subject to Section 10.07(e), the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01 (subject to the requirements of Sections 3.01(b), (c), (d) and (e), as applicable (it being understood that the documentation required under such Sections shall be delivered to the participating Lender)), 3.04 and 3.05 (through the applicable Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.07(b). To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of Section 10.09 as though it were a Lender; *provided* that such Participant agrees to be subject to Section 2.12 as though it were a Lender. To the extent that any participation is purported to be made to a Disqualified Lender or a Net Short Lender, such transaction shall be subject to the applicable provisions of Section 10.27. Lenders shall be entitled to rely conclusively on any Net Short Representation made (or deemed made) to

it in any agreement or instrument documenting or otherwise evidencing such Participation and shall have no duty to inquire as to or investigate the accuracy of any Net Short Representation therein or provided in connection with such Participation.

(e) **Limitations upon Participant Rights.** A Participant shall not be entitled to receive any greater payment under Section 3.01, 3.04 or 3.05 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent, such consent not to be unreasonably withheld or delayed, or such entitlement to a greater payment results from a change in law that occurs after the Participant acquired the participation. Each Lender that sells a participation or has a loan funded by an SPC shall (acting solely for this purpose as a non-fiduciary agent of the Borrower) maintain a register complying with the requirements of Sections 163(f), 871(h) and 881(c)(2) of the Code and the Treasury regulations (or any other relevant or successor provisions of the Code or of such United States Treasury regulations) issued thereunder relating to the exemption from withholding for portfolio interest on which is entered the name and address of each Participant or SPC and the principal amounts (and stated interest) of each Participant's or SPC's interest in the Loans or other obligations under this Agreement (the "**Participant Register**"). A Lender shall not be obligated to disclose the Participant Register to any Person except to the extent such disclosure is necessary to establish that any Loan or other obligation is in registered form under Section 5f.103-1(c) or proposed Section 1.163-5(b) of the United States Treasury regulations (or any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(f) **Liens on Loans.** Any Lender may, at any time without the consent of the Borrower or the Administrative Agent, pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Notes, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or any other central bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) **Special Purpose Funding Vehicles.** Notwithstanding anything to the contrary contained herein, any Lender (a "**Granting Lender**") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower (an "**SPC**") the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, and (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. Each party hereto hereby agrees that (A) neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement (including its obligations under Sections 3.01, 3.04 and 3.05), (B) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (C) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the lender of record hereunder. The making of a Loan by an SPC hereunder shall utilize

the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior debt of any SPC, it will not institute against, or join any other Person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency, receivership or liquidation proceeding under the laws of the United States or any State thereof or any Debtor Relief Law or other applicable Law. Notwithstanding anything to the contrary contained herein, any SPC may (1) with notice to, but without prior consent of the Borrower and the Administrative Agent and with the payment of a processing fee of \$3,500 (which processing fee may be waived by the Administrative Agent in its sole discretion), assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (2) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.

(h) **Affiliated Lenders.** Any Lender may, at any time, assign all or a portion of its rights and obligations with respect to Loans and Commitments under this Agreement (including under Incremental Term Facilities) to a Person who is or will become, after such assignment, an Affiliated Lender (including any Affiliated Debt Fund) through (i) Dutch auctions open to all Lenders in accordance with the procedures set forth on Exhibit L or (ii) open market purchase on a non-*pro rata* basis, in each case subject to the following limitations applicable to Affiliated Lenders that are not Affiliated Debt Funds:

(i) Such Affiliated Lenders

(A) will not receive information provided solely to Lenders by the Administrative Agent or any Lender except to the extent such materials are made available to the Borrower and will not be permitted to attend or participate in conference calls or meetings attended solely by the Lenders and the Administrative Agent, other than the right to receive notices of prepayments and other administrative notices in respect of its Term Loans or Commitments required to be delivered to Lenders pursuant to Article II,

(B) will not receive the advice of counsel provided solely to the Administrative Agent or the Lenders, and

(C) may not challenge the attorney-client privilege between the Administrative Agent and counsel to the Administrative Agent or between the Lenders and counsel to the Lenders;

(ii) the Assignment and Assumption will include either

(A) a representation by the applicable Affiliated Lender acquiring or disposing of Term Loans in such assignment that, as of the date of any such purchase or sale, it is not in possession of material non-public information with respect to the Borrower, its Subsidiaries or their respective securities or

(B) a statement by the applicable Affiliated Lender acquiring or disposing of Term Loans in such assignment that it cannot make the representation set forth in the foregoing clause (A);

(iii) (A) the aggregate principal amount of Term Loans held by all Affiliated Lenders that are not Affiliated Debt Funds shall not exceed 25.00% of the aggregate outstanding principal amount of all Term Loans at the time of purchase or assignment (such percentage, the “**Affiliated Lender Term Loan Cap**”),

(B) unless otherwise agreed to in writing by the Required Facility Lenders, regardless of whether consented to by the Administrative Agent or otherwise, no assignment which would result in Affiliated Lenders that are not Affiliated Debt Funds holding Term Loans with an aggregate principal amount in excess of the Affiliated Lender Term Loan Cap, shall in either case be effective with respect to such excess amount of the Term Loans (and such excess assignment shall be and be deemed null and void); *provided* that each of the parties hereto agrees and acknowledges that the Administrative Agent shall not be liable for any losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever incurred or suffered by any Person in connection with any compliance or non-compliance with this Section 10.07(h)(iii) or any purported assignment exceeding the Affiliated Lender Term Loan Cap limitation or for any assignment being deemed null and void hereunder and

(C) in the event of an acquisition pursuant to the last sentence of this clause (h) which would result in the Affiliated Lender Term Loan Cap being exceeded, the most recent assignment to an Affiliated Lender involved in such acquisition shall be unwound and deemed null and void to the extent that the Affiliated Lender Term Loan Cap, would otherwise be exceeded;

(iv) [reserved];

(v) as a condition to each assignment pursuant to this clause (h),

(A) the Administrative Agent shall have been provided a notice in the form of Exhibit D-2 to this Agreement in connection with each assignment to an Affiliated Lender or an Affiliated Debt Fund or a Person that upon effectiveness of such assignment would constitute an Affiliated Lender or an Affiliated Debt Fund, and (without limitation of the provisions of clause (iii) above) shall be under no obligation to record such assignment in the Register until three Business Days after receipt of such notice and

(B) the Administrative Agent shall have consented to such assignment (which consent shall not be withheld unless the Administrative Agent reasonably believes that such assignment would violate Section 10.07(h)(iii)).

Each Affiliated Lender and each Affiliated Debt Fund agrees to notify the Administrative Agent promptly (and in any event within ten Business Days) if it acquires any Person who is also a

Lender, and each Lender agrees to notify the Administrative Agent promptly (and in any event within ten Business Days) if it becomes an Affiliated Lender or an Affiliated Debt Fund. Such notice shall contain the type of information required and be delivered to the same addressee as set forth in Exhibit D-2.

(i) **Voting Limitations.** Notwithstanding anything in Section 10.01 or the definition of “**Required Lenders**” to the contrary:

(i) for purposes of determining whether the Required Lenders have

(A) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, or subject to Section 10.07(j), any plan of reorganization pursuant to the Bankruptcy Code,

(B) otherwise acted on any matter related to any Loan Document, or

(C) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document,

in each case, that does not require the consent of a specific Lender, each Lender or each affected Lender, or does not affect such Affiliated Lender that is not an Affiliated Debt Fund in a disproportionately adverse manner as compared to other Lenders holding similar obligations, Affiliated Lenders that are not Affiliated Debt Funds will be deemed to have voted in the same proportion as non-Affiliated Lenders voting on such matters; and

(ii) Affiliated Debt Funds may not in the aggregate account for more than 49.90% of the amounts set forth in the calculation of Required Lenders and any amount in excess of 49.90% will be subject to the limitations set forth in clause 10.07(i)(i) above.

(j) **Insolvency Proceedings.** Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, each Affiliated Lender that is not an Affiliated Debt Fund hereby agrees that, if a proceeding under any Debtor Relief Law shall be commenced by or against the Borrower or any other Loan Party at a time when such Lender is an Affiliated Lender, such Affiliated Lender irrevocably authorizes and empowers the Administrative Agent to vote on behalf of such Affiliated Lender with respect to the Term Loans held by such Affiliated Lender in any manner in the Administrative Agent’s sole discretion, unless the Administrative Agent instructs such Affiliated Lender to vote, in which case such Affiliated Lender shall vote with respect to the Term Loans held by it as the Administrative Agent directs; **provided** that such Affiliated Lender shall be entitled to vote in accordance with its sole discretion (and not in accordance with the direction of the Administrative Agent) in connection with any plan of reorganization or arrangement or proposal to the extent any such plan of reorganization or arrangement or proposal proposes to treat any Obligations held by such Affiliated Lender in a manner that is less favorable in any material respect to such Affiliated Lender than the proposed treatment of similar Obligations held by Lenders that are not Affiliates of the Borrower. The Lenders and each Affiliated Lender that is not an Affiliated Debt Fund agree and acknowledge that the provisions set forth in this Section 10.07(j) and the related provisions set forth in each Assignment and Assumption entered

into by an Affiliated Lender constitute a “subordination agreement” as such term is contemplated by, and utilized in, Section 510(a) of the Bankruptcy Code or any other applicable Debtor Relief Law, and, as such, would be enforceable for all purposes in any case where the Borrower or any Restricted Subsidiary has filed for protection under any law relating to bankruptcy, insolvency, arrangement, receivership or reorganization or relief of debtors applicable to the Borrower or such Restricted Subsidiary, as applicable. Each Affiliated Lender hereby irrevocably appoints the Administrative Agent (such appointment being coupled with an interest) as such Affiliated Lender’s attorney-in-fact, with full authority in the place and stead of such Affiliated Lender and in the name of such Affiliated Lender (solely in respect of Term Loans and participations therein and not in respect of any other claim or status such Affiliated Lender may otherwise have), from time to time in the Administrative Agent’s discretion to take any action and to execute any instrument that the Administrative Agent may deem reasonably necessary to vote on behalf of such Affiliated Lender as set forth in this **Section 10.07(j)**.

(k) **Assignments to Borrower, etc.**

(i) Any Lender may, so long as no Event of Default has occurred and is continuing or would result therefrom, assign all or a portion of its rights and obligations with respect to the Term Loans and the Term Loan Commitments under this Agreement to the Borrower or any of its Subsidiaries through (i) Dutch auctions open to all Lenders in accordance with the procedures set forth on **Exhibit L** or (ii) open market purchase on a non-pro rata basis, in each case subject to the following limitations; *provided* that:

(a) if the assignee is the Borrower or a Subsidiary of the Borrower, upon such assignment, transfer or contribution, the applicable assignee shall automatically be deemed to have contributed or transferred the principal amount of such Term Loans, *plus* all accrued and unpaid interest thereon, to the Borrower; or

(b) if the assignee is the Borrower (including through contribution or transfers set forth in **clause (A)** above or **Section 10.07(k)(ii)**,

(1) the principal amount of such Term Loans, along with all accrued and unpaid interest thereon, so contributed, assigned or transferred to the Borrower shall be deemed automatically cancelled and extinguished on the date of such contribution, assignment or transfer and

(2) the Borrower shall promptly provide notice to the Administrative Agent of such contribution, assignment or transfer of such Term Loans, and the Administrative Agent, upon receipt of such notice, shall reflect the cancellation of the applicable Term Loans in the Register; and

(c) no proceeds of any loans under the ABL Credit Facility shall be used to finance any such purchase and assignment unless immediately after giving effect to such purchase and assignment and on a Pro Forma Basis for such prepayment, the Payment Conditions have been satisfied.

(ii) Any Affiliated Lender may, in its discretion (but is not required to), assign all or a portion of its rights and obligations with respect to the Term Loans and the Term Loan Commitments under this Agreement to the Borrower or any of its Subsidiaries (regardless of whether any Default or Event of Default has occurred and is continuing or would result therefrom), on a non-*pro rata* basis, for purposes of cancelling such Term Loans or Term Loan Commitments, which may include contribution (with the consent of the Borrower) to the Borrower in exchange for (A) debt permitted under **Section 7.03** on a dollar-for-dollar basis or (B) Equity Interests of the Borrower that are otherwise permitted to be incurred or issued by the Borrower at such time.

Section 10.08 Confidentiality. Each of the Administrative Agent, the Collateral Agent, the Lead Arranger and the Lenders agrees to maintain the confidentiality of the Information in accordance with its customary procedures (as set forth below), except that Information may be disclosed,

(a) to its Affiliates and branches and to its and its Affiliates' and branches' respective partners, directors, officers, employees, agents, trustees, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential and in no event shall such disclosure be made to any Disqualified Lender or a Net Short Lender (other than a Net Short Lender (x) that provides a Net Short Representation at the time of such disclosure or (y) as to which the disclosing party does not have actual knowledge that such Person is a Net Short Lender) pursuant to this **clause (a)** but, in the case of any Disqualified Lender, only to the extent that a list of such Disqualified Lenders is available to all Lenders upon request);

(b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including the Federal Reserve Bank or any other central bank or any self-regulatory authority, such as the National Association of Insurance Commissioners);

(c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, *provided* that the Administrative Agent, the Collateral Agent, such Lead Arranger or such Lender, as applicable, agrees that it will notify the Borrower as soon as practicable in the event of any such disclosure by such Person (other than at the request of a regulatory authority) unless such notification is prohibited by law, rule or regulation;

(d) to any other party hereto (it being understood that in no event shall such disclosure be made to any Disqualified Lender or a Net Short Lender (other than a Net Short Lender (x) that provides a Net Short Representation at the time of such disclosure or (y) as to which the disclosing party does not have actual knowledge that such Person is a Net Short Lender) pursuant to this **clause (d)** but, in the case of a Disqualified Lender, only to the extent the list of such Disqualified Lenders is available to all Lenders upon request);

(e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder;

(f) subject to an agreement containing provisions at least as restrictive as those of this **Section 10.08** (it being understood that in no event shall such disclosure be made to any Disqualified Lender or Net Short Lender (other than a Net Short Lender (x) that provides a Net Short Representation at the time of such disclosure or (y) as to which the disclosing party does not have actual knowledge that such Person is a Net Short Lender) pursuant to this **clause (f)** but, in the case of a Disqualified Lender, only to the extent that a list of such Disqualified Lenders is available to all Lenders upon request), to (i) any *bona fide* assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be an Additional Lender, (ii) any actual or prospective direct or indirect counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower or any of its Subsidiaries or any of their respective obligations or (iii) any provider of credit risk protection;

(g) with the prior written consent of the Borrower;

(h) to any rating agency when required by it (it being understood that, prior to any such disclosure, that such Lender shall instruct such rating agency to and such rating agency shall undertake to preserve the confidentiality of any Information relating to the Loan Parties received by it from such Lender); or

(i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this **Section 10.08** or (ii) becomes available to the Administrative Agent, the Collateral Agent, any Lead Arranger, any Lender or any of their respective Affiliates or branches on a non-confidential basis from a source other than the Borrower or any of its Affiliates, and which source is not known by such Person to be subject to a confidentiality restriction in respect thereof in favor of the Borrower or any Affiliate of the Borrower.

In addition, each of the Administrative Agent, the Collateral Agent, the Lead Arranger and the Lenders may disclose the existence of this Agreement and the information about this Agreement to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Loans, market data collectors, similar service providers to the lending industry, and service providers to the Administrative Agent, the Collateral Agent, the Lead Arranger and the Lenders in connection with the administration and management of this Agreement and the other Loan Documents.

For purposes of this **Section 10.08**, “**Information**” means all information received from or on behalf of any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary thereof or their respective businesses, other than any such information that is available to the Administrative Agent, the Collateral Agent or any Lender on a non-confidential basis prior to disclosure by any Loan Party or any Subsidiary thereof; it being understood that all information received from the Borrower or any Subsidiary after the date hereof shall be deemed confidential unless such information is clearly identified at the time of delivery as not being confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so in accordance with its customary procedures if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Collateral Agent, the Lead Arranger and the Lenders acknowledges that (A) the Information may include Private-Side Information concerning the Borrower or a Subsidiary, as the case may be and (B) it has developed compliance procedures regarding the use of Private-Side Information.

Notwithstanding anything to the contrary therein, nothing in any Loan Document shall require the Borrower or any of its Affiliates or other subsidiaries to provide information

- (i) that constitutes non-financial trade secrets or non-financial proprietary information,
- (ii) in respect of which disclosure is prohibited by applicable Law,
- (iii) that is subject to attorney client or similar privilege or constitutes attorney work product or
- (iv) the disclosure of which is restricted by binding agreements not entered into primarily for the purpose of qualifying for the exclusion in this **clause (iv)**.

Section 10.09 Set-off. If an Event of Default shall have occurred and be continuing and each Lender and each of their respective Affiliates and branches is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, without notice to any Loan Party or to any other Person (other than the Administrative Agent), any such notice being hereby expressly waived, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate or branch to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not (a) such Lender shall have made any demand under this Agreement or any other Loan Document and (b) the principal of or the interest on the Loans or any other amounts due hereunder shall have become due and payable pursuant to Article II and although such obligations of the Borrower or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness; **provided** that in the event that any Defaulting Lender shall exercise any such right of setoff, (i) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of **Sections 2.12** and **2.16** and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (ii) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of set-off) that such Lender or Affiliates or branches may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such set-off and application, **provided** that the failure to give such notice shall not affect the validity of such set-off and application.

Section 10.10 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents with respect to any of the Obligations, shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “**Maximum Rate**”). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder. If the rate of interest under this Agreement at any time exceeds the Maximum Rate, the outstanding amount of the Loans made hereunder shall bear interest at the Maximum Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, the Borrower shall pay to the Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Maximum Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of the Lenders and the Borrower to conform strictly to any applicable usury laws.

Section 10.11 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging (including in .pdf or .tif format) means shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 10.12 Electronic Execution of Assignments and Certain Other Documents. The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption, in or related to this Agreement or any other document to be signed in connection with this Agreement and the transactions contemplated hereby or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; **provided** that notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to agree to accept electronic signatures

in any form or any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

Section 10.13 Survival. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Borrowing, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Loan Party set forth in Sections 3.01, 3.04, 3.05, 10.04, 10.05 and 10.09 and the agreements of the Lenders set forth in Sections 2.12, 9.03 and 9.07 shall survive the satisfaction of the Termination Conditions, and the termination hereof.

Section 10.14 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable in any jurisdiction, (a) the legality, validity and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this **Section 10.14**, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

Section 10.15 GOVERNING LAW.

(a) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER (INCLUDING ANY CLAIMS SOUNDING IN CONTRACT LAW OR TORT LAW ARISING OUT OF THE SUBJECT MATTER HEREOF AND ANY DETERMINATIONS WITH RESPECT TO POST-JUDGMENT INTEREST) AND EACH OTHER LOAN DOCUMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(b) BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY, EACH LEAD ARRANGER) IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK CITY IN THE BOROUGH OF MANHATTAN AND OF ANY UNITED STATES FEDERAL COURT SITTING IN THE BOROUGH OF MANHATTAN, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (OTHER THAN WITH

RESPECT TO ACTIONS BY ANY AGENT IN RESPECT OF RIGHTS UNDER ANY COLLATERAL DOCUMENT OR ANY OTHER LOAN DOCUMENT GOVERNED BY A LAW OTHER THAN THE LAWS OF THE STATE OF NEW YORK OR WITH RESPECT TO ANY COLLATERAL SUBJECT THERETO), OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY, EACH LEAD ARRANGER) IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY, EACH LEAD ARRANGER) AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. EACH PARTY HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY, EACH LEAD ARRANGER) AGREES THAT THE AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER THIS AGREEMENT, ANY COLLATERAL DOCUMENT OR ANY OTHER LOAN DOCUMENT OR THE ENFORCEMENT OF ANY JUDGMENT.

(c) EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION. EACH OF THE PARTIES HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY, EACH LEAD ARRANGER) HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

Section 10.16 WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY, EACH LEAD ARRANGER) HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY,

EACH LEAD ARRANGER) (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY, EACH LEAD ARRANGER) FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.16 AND EXECUTED BY EACH OF THE PARTIES HERETO AND THE LEAD ARRANGERS), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 10.17 Limitation of Liability. The Loan Parties agree that no Indemnitee shall have any liability (whether in contract, tort or otherwise) to any Loan Party or any of their respective Subsidiaries or any of their respective equity holders or creditors for or in connection with the transactions contemplated hereby and in the other Loan Documents, except to the extent such liability is determined in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnitee's gross negligence or willful misconduct or bad faith or material breach by such Indemnitee of its obligations under this Agreement. In no event, shall any party hereto, any Loan Party or any Indemnitee be liable on any theory of liability for any special, indirect, consequential or punitive damages (including any loss of profits, business or anticipated savings) (other than, in the case of the Loan Parties, in respect of any such damages incurred or paid by an Indemnitee to a third party). Each party hereto (and by its acceptance of its appointment in such capacity, each Lead Arranger) hereby waives, releases and agrees (each for itself and on behalf of its Subsidiaries) not to sue upon any such claim for any special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

Section 10.18 Use of Name, Logo, Etc. Each Loan Party consents to the publication in the ordinary course by the Administrative Agent or any Lead Arranger of customary advertising material relating to the financing transactions contemplated by this Agreement using such Loan Party's name, product photographs, logo or trademark; *provided* that any such trademarks or logos are used solely in a manner that is not intended to or reasonably likely to harm or disparage the Borrower or any of its Subsidiaries or the reputation or goodwill of any of them. Such consent

shall remain effective until revoked by such Loan Party in writing to the Administrative Agent and such Lead Arranger, as applicable.

Section 10.19 USA PATRIOT Act Notice. Each Lender that is subject to the USA PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies each Loan Party that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act. Each Loan Party shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act.

Section 10.20 Service of Process. EACH PARTY HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY, EACH LEAD ARRANGER) IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN **SECTION 10.02**. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

Section 10.21 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Loan Party acknowledges and agrees, and acknowledges its Affiliates’ understanding that:

- (a) (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm’s-length commercial transactions between the Agents, the Lenders and the Lead Arrangers on the one hand, and the Loan Parties and their Affiliates, on the other hand,
- (ii) each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and
- (iii) each of the Loan Parties is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents;
- (b) (i) the Agents and the Lead Arrangers are and have been, and each Lender is and has been, acting solely as a principal and, except as expressly agreed in writing by the relevant parties, have or has not been, are or is not, and will not be acting as an advisor, agent or fiduciary for the Loan Parties, its stockholders or its Affiliates (irrespective of whether any Lender has advised, is currently advising or will advise any Loan Party, its stockholders or its Affiliates on other matters), or any other Person and

(ii) none of the Agents, the Lead Arrangers nor any Lender has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and

(c) the Agents, the Lead Arrangers, the Lenders and their respective Affiliates and branches may be engaged in a broad range of transactions that involve economic interests that conflict with those of the Loan Parties, their stockholders and/or their affiliates, and none of the Agents, the Lead Arrangers nor any Lender has any obligation to disclose any of such interests to the Borrower or any of its Affiliates.

Each Loan Party agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and such Loan Party, its stockholders or its affiliates, on the other. To the fullest extent permitted by law, each Loan Party hereby waives and releases any claims that it may have against the Agents, the Lead Arrangers or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 10.22 Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower and the Administrative Agent and the Administrative Agent shall have been notified by each Lender that each such Lender has executed it and thereafter shall be binding upon and inure to the benefit of the Borrower, each Agent, each Lender and their respective successors and assigns.

Section 10.23 Obligations Several; Independent Nature of Lender's Rights. The obligations of the Lenders hereunder are several and no Lender shall be responsible for the obligations or Commitments of any other Lender hereunder. Nothing contained herein or in any other Loan Document, and no action taken by the Lenders pursuant hereto or thereto, shall be deemed to constitute the Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising out hereof and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

Section 10.24 Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

Section 10.25 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an Affected Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
- (i) a reduction in full or in part or cancellation of any such liability;
 - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
 - (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

Section 10.26 Acknowledgment Regarding Any Supported QFCs.

(a) To the extent that the Loan Documents provide support, through a guarantee or otherwise (including the Guaranty), for any Hedge Agreement or any other agreement or instrument that is a QFC (such support, “**QFC Credit Support**”, and each such QFC, a “**Supported QFC**”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “**U.S. Special Resolution Regimes**”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States).

(b) In the event a Covered Entity that is party to a Supported QFC (each, a “**Covered Party**”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(a) **Replacement of Disqualified Lenders.**

(i) To the extent that any assignment or participation is made or purported to be made to a Disqualified Lender or Net Short Lender (notwithstanding the other restrictions in this Agreement with respect to Disqualified Lenders), or if any Lender or Participant becomes a Disqualified Lender or a Net Short Lender, in each case, without limiting any other provision of the Loan Documents,

(a) upon the request of the Borrower, such Disqualified Lender shall be required immediately (and in any event within five Business Days) to assign all or any portion of the Loans and Commitments then owned by such Disqualified Lender (or held as a participation) to another Lender (other than a Defaulting Lender or another Disqualified Lender), Eligible Assignee or the Borrower, and

(b) the Borrower shall have the right to prepay all or any portion of the Loans and Commitments then owned by such Disqualified Lender (or held as a participation), and if applicable, terminate the Commitments of such Disqualified Lender, in whole or in part.

(ii) Any such assignment or prepayment shall be made in exchange for an amount equal to the lesser of (A) the face principal amount of the Loans so assigned, (B) the amount that such Disqualified Lender paid to acquire such Commitments and/or Loans and (C) the then-quoted trading price for such Loans or Participations, in each case without interest thereon (it being understood that if the effective date of any such assignment is not an interest payment date, such assignee shall be entitled to receive on the next succeeding interest payment date interest on the principal amount of the Loans so assigned that has accrued and is unpaid from the interest payment date last preceding such effective date (except as may be otherwise agreed between such assignee and the Borrower)).

(iii) The Borrower shall be entitled to seek specific performance in any applicable court of law or equity to enforce this **Section 10.27**. In addition, in connection with any such assignment,

(A) if such Disqualified Lender does not execute and deliver to the Administrative Agent a duly completed Assignment and Assumption and/or any other documentation necessary or appropriate (in the good faith determination of the Administrative Agent or the Borrower, which determination shall be conclusive) to reflect such replacement by the later of

(1) the date on which the replacement Lender executes and delivers such Assignment and Assumption and/or such other documentation and

(2) the date as of which such Disqualified Lender shall be paid by the assignee Lender (or, at its option, the Borrower) the amount required pursuant to this section, then such Disqualified Lender shall be deemed to

have executed and delivered such Assignment and Assumption and/or such other documentation as of such date and the Borrower shall be entitled (but not obligated) to execute and deliver such Assignment and Assumption and/or such other documentation on behalf of such Disqualified Lender, and the Administrative Agent shall record such assignment in the Register,

(B) each Lender (whether or not then a party hereto) agrees to disclose to the Borrower the amount that the applicable Disqualified Lender paid to acquire Commitments and/or Loans from such Lender and

(C) each Lender that is a Disqualified Lender agrees to disclose to the Borrower the amount it paid to acquire the Commitments and/or Loans held by it.

(b) **Amendments, Consents and Waivers under the Loan Documents.** No Disqualified Lender or Net Short Lender shall have the right to approve or disapprove any amendment, waiver or consent pursuant to **Section 10.01** or under any Loan Document. In connection with any determination as to whether the requisite Lenders (including whether the Required Lenders or Required Facility Lenders) have provided any amendment, waiver or consent pursuant to **Section 10.01** or under any other Loan Document:

(i) Disqualified Lenders and Net Short Lenders shall not be considered, and

(ii) Disqualified Lenders and Net Short Lenders shall be deemed to have consented to any such amendment, waiver or consent with respect to its interest as a Lender in the same proportion as the allocation of voting with respect to such matter by Lenders who are not Disqualified Lenders or Net Short Lenders;

provided that (A) the Commitment of any Disqualified Lender or Net Short Lender may not be increased or extended without the consent of such Disqualified Lender or Net Short Lender, as applicable, and (B) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Disqualified Lender (other than any Net Short Lender) more adversely than other affected Lenders shall require the consent of such Disqualified Lender.

Each Lender that is not an Unrestricted Lender that delivers a written consent to any amendment, waiver or consent pursuant to **Section 10.01** or under any other Loan Document shall concurrently deliver (or in the absence of any written Net Short Representation will be deemed to have delivered, concurrently with providing such consent) to the Borrower (with a copy to the Administrative Agent) a Net Short Representation.

(c) **Limitation on Rights and Privileges of Disqualified Lenders.** Except as otherwise provided in **Section 10.27(b)(ii)**, no Disqualified Lenders shall have the right to, and each such Person covenants and agrees not to, instruct the Administrative Agent, Collateral Agent or any other Person in respect of the exercise of remedies with respect to the Loans or other Obligations. Further, no Disqualified Lender that purports to be a Lender or Participant (notwithstanding any provisions of this Agreement that may have prohibited such Disqualified Lender from becoming Lender or Participant) shall be entitled to any of the rights or privileges enjoyed by the other Lenders with respect to voting (other than to the extent provided in **Section**

10.27(b)), and shall be deemed for all purposes to be, at most, a Defaulting Lender until such time as such Disqualified Lender no longer owns any Loans or Commitments.

(d) **Survival.** The provisions of this Section 10.27 shall apply and survive with respect to each Lender and Participant notwithstanding that any such Person may have ceased to be a Lender or Participant hereunder or this Agreement may have been terminated.

(e) **Administrative Agent.**

(i) **Reliance.** The Administrative Agent shall be entitled to rely conclusively on any Net Short Representation delivered, provided or made (or deemed delivered, provided or made) to it in accordance with this Agreement, shall have no duty to inquire as to or investigate the accuracy of any Net Short Representation, verify any statements in any officer's certificate delivered to it, or otherwise make any calculations, investigations or determinations with respect to any Derivative Instruments or Net Short Positions or any Person. The Administrative Agent shall have no liability to the Borrower, any Lender or any other Person in acting in good faith on any notice of Default or acceleration.

(ii) **Disqualified Lender Lists.** The Administrative Agent shall have no responsibility or liability for monitoring or enforcing the list of Disqualified Lenders or for any assignment or participation to a Disqualified Lender.

(iii) **Liability Limitations.** The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Lenders or Net Short Lenders. Without limiting the generality of the foregoing, the Administrative Agent shall not:

(x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Lender or Net Short Lender,

(y) have any liability with respect to or arising out of any assignment or participation of commitments or loans, or disclosure of confidential information, to any Disqualified Lender or

(z) have any liability with respect to or arising out of the voting in any amendment or waiver to any Loan Document by any Net Short Lender.

The list of Disqualified Lenders shall be specified on a schedule that is held with the Administrative Agent, which list may be provided to any Lender or its proposed assignee upon request.

[SIGNATURE PAGES ARE OMITTED]

ABL REVOLVING CREDIT AGREEMENT

dated as of March 4, 2021, as amended as of December 12, 2022
by and among

PETCO HEALTH AND WELLNESS COMPANY, INC.,
as the Borrower

CITIBANK, N.A.,
as Administrative Agent and Collateral Agent and

THE LENDERS PARTY HERETO

CITIBANK, N.A.,
GOLDMAN SACHS BANK USA,
BOFA SECURITIES, INC.,
CREDIT SUISSE LOAN FUNDING LLC,
UBS SECURITIES LLC,
WELLS FARGO BANK, NATIONAL ASSOCIATION and
CAPITAL ONE, NATIONAL ASSOCIATION
as Joint Lead Arrangers and Joint Bookrunners

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ABL REVOLVING CREDIT AGREEMENT

This ABL REVOLVING CREDIT AGREEMENT is entered into as of March 4, 2021 (as amended by that certain First Amendment to ABL Revolving Credit Agreement, dated as of December 12, 2022), by and among PETCO HEALTH AND WELLNESS COMPANY, INC., a Delaware corporation (the “*Borrower*”), CITIBANK, N.A. (“*Citibank*”), as administrative agent (in such capacity, including any successor thereto, the “*Administrative Agent*”) and as collateral agent (in such capacity, including any successor thereto, the “*Collateral Agent*”) under the Loan Documents, each Issuing Bank from time to time party hereto, each financial institution listed on the signature pages hereto as an Agent, the financial institutions set forth on the cover of this Agreement as joint lead arrangers and joint bookrunners (collectively, the “*Lead Arrangers*” and “*Joint Bookrunners*”), and each lender from time to time party hereto (collectively, the “*Lenders*” and, individually, a “*Lender*”). Capitalized terms used herein are defined as set forth in Section 1.01.

PRELIMINARY STATEMENTS

The Borrower has requested that from time to time (including on the Closing Date substantially simultaneously with the Closing Date Refinancing and upon satisfaction (or waiver) of the conditions precedent set forth in Article IV below), the Revolving Lenders make Revolving Loans, the Swing Line Lender to make Swing Line Loans and the Issuing Banks issue Letters of Credit, pursuant to the terms of this Agreement.

On the Closing Date, the Borrower will enter into the Term Loan Credit Agreement pursuant to which the Term Loan Lenders will extend credit to the Borrower in the form of Initial Dollar Term Loans in an aggregate principal amount of \$1,700,000,000.

On the Closing Date, the Borrower will repay (or cause to be repaid) all outstanding Indebtedness (the “*Existing Indebtedness*”) under, terminate any commitments under, and cause to be released any contractual Liens securing obligations under the Existing Indebtedness Documents (such repayment, termination and release, collectively, the “*Closing Date Refinancing*”).

The proceeds of the borrowings hereunder permitted on the Closing Date, together with the proceeds of the Initial Term Loans and cash on hand at the Borrower and its Subsidiaries will be used to finance the Transactions, for working capital purposes and to finance transactions not prohibited by this Agreement.

The applicable Lenders have indicated their willingness to lend, and each Issuing Bank has indicated its willingness to issue Letters of Credit, in each case on the terms and subject to the conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I.
DEFINITIONS AND ACCOUNTING TERMS

Section 1.01 Defined Terms. As used in this Agreement, the following terms have the meanings set forth below:

“**ABL Priority Collateral**” means the “**ABL Collateral**” as defined in the Closing Date ABL Intercreditor Agreement.

“**Acceptable Appraiser**” means (a) Great American Appraisal & Valuation Services, LLC or (b) any other experienced and reputable appraiser reasonably acceptable to the Borrower and the Administrative Agent.

“**Account**” has the meaning assigned to such term in the Security Agreement.

“**Account Debtor**” means any Person obligated on an Account.

“**Acquired Accounts Borrowing Base**” has the meaning specified in the definition of “**Eligible Accounts**”.

“**Acquired Inventory Borrowing Base**” has the meaning specified in the definition of “**Eligible Inventory**”.

“**Acquisition Transaction**” means the purchase or other acquisition (in one transaction or a series of transactions, including by merger, amalgamation or otherwise) by the Borrower or any Restricted Subsidiary of all or substantially all the property, assets or business of another Person, or assets constituting a business unit, line of business or division of, any Person, or of a majority of the outstanding Equity Interests of any Person (including any Investment which serves to increase the Borrower’s or any Restricted Subsidiary’s respective equity ownership in any Joint Venture (other than an Unrestricted Subsidiary) or other Person to an amount in excess (or further in excess) of the majority of the outstanding Equity Interests of such Joint Venture or other Person).

“**Ad Valorem Tax Reserve**” means an amount equal to any unpaid ad valorem taxes payable on any Inventory under the laws of the State of Texas or any such other state(s) in which such ad valorem taxes has priority by operation of law over the Lien of the Collateral Agent in any of the Collateral consisting of Eligible Inventory, as notified by the Administrative Agent to the Borrower in writing.

“**Additional Lender**” means, at any time, any bank, other financial institution or institutional investor that, in any case, is not an existing Lender and that agrees to provide any portion of any Incremental Loan in accordance with **Section 2.16**; *provided* that each Additional Lender (other than any Person that is a Lender, an Affiliate of a Lender or an Approved Fund of a Lender at such time) shall be subject to the approval of the Administrative Agent, the Swing Line Lender and/or the Issuing Banks (such approval not to be unreasonably withheld, conditioned or delayed), in each case to the extent any such consent would be required from the Administrative Agent, the Swing Line Lender and/or the Issuing Banks under **Section 11.07(b)(iii)(B), (C), and/or (D)**, respectively, for an assignment of Loans to such Additional Lender.

“**Adjusted Term SOFR**” means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment.

“**Adjustment Date**” means the first day of each January, April, July and October, as applicable.

“**Administrative Agent**” has the meaning specified in the introductory paragraph to this Agreement.

“**Administrative Agent Account**” has the meaning specified in Section 6.18(c).

“**Administrative Agent’s Office**” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 11.02, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

“**Administrative Questionnaire**” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“**Affected Financial Institution**” means (a) any EEA Financial Institution, or (b) any UK Financial Institution.

“**Affiliate**” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. As used in this definition, “**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise, and “**Controlled**” has the meaning correlative thereto. For the avoidance of doubt, none of the Lead Arrangers, the Agents or their respective lending affiliates shall be deemed to be an Affiliate of the Loan Parties or any of the Restricted Subsidiaries.

“**Agent Parties**” has the meaning specified in Section 11.02(e).

“**Agent-Related Persons**” means the Agents, together with their respective Affiliates and branches, and the officers, directors, shareholders, employees, agents, attorney-in-fact, partners, trustees, advisors and other representatives of such Persons and of such Persons’ Affiliates and branches.

“**Agents**” means, collectively, the Administrative Agent, the Collateral Agent, the Joint Bookrunners, the Supplemental Administrative Agents (if any) and the Lead Arrangers.

“**Aggregate Commitments**” means the Commitments of all the Lenders.

“**Agreement**” means this Credit Agreement, as amended, restated, modified or supplemented from time to time in accordance with the terms hereof.

“**Agreement Currency**” has the meaning specified in Section 2.21(b).

“**AHYDO Catch Up Payment**” has the meaning specified in Section 7.09(a)(viii).

“**Alternative Currencies**” means, in the case of Revolving Loans, Incremental Revolving Facilities, Extended Revolving Loans and Letters of Credit, any other currency agreed to by the Administrative Agent, the Borrower and each Revolving Lender providing such Revolving Loans, Incremental Revolving Facilities or Extended Revolving Loans (in its sole discretion); **provided** that, in each case, each such other currency is a lawful currency that is readily available, freely transferable and not restricted, able to be converted into Dollars and available in the London interbank deposit market or other applicable offshore interbank market.

“**Annual Financial Statements**” means the audited consolidated balance sheets of Petco Health and Wellness Company, Inc., a Delaware corporation, as of February 1, 2020, and the related consolidated statements of operations, changes in stockholders’ equity and cash flows for Petco Health and Wellness, Company, Inc. for the fiscal year then ended.

“**Applicable Creditor**” has the meaning specified in **Section 2.21(b)**.

“**Applicable Decimal Place**” has the meaning specified in **Section 1.04**.

“**Applicable Commitment Fee**” means a percentage *per annum* that shall be equal to,

(a) for each day from the Closing Date until the last day of the first full fiscal quarter completed after the Closing Date, 0.375% *per annum*, and

(b) thereafter, for each Fiscal Quarter or portion thereof, the applicable rate *per annum* set forth below under the caption “**Applicable Commitment Fee**” based upon the Average Usage for the preceding Fiscal Quarter then-ended:

Category	Average Usage
_____	Less than 50%
_____	Greater than 50%
Category 2	or equal to 0.25% to 50%

provided that the Applicable Commitment Fee shall be adjusted quarterly on a prospective basis on each Adjustment Date based upon the Average Usage in accordance with the table above.

“**Applicable Indebtedness**” has the meaning specified in the definition of “**Weighted Average Life to Maturity**.”

“**Applicable Rate**” means:

(a) for any day from the Closing Date until the last day of the first full fiscal quarter completed after the Closing Date, a percentage *per annum* equal to, (i) for Term Benchmark Loans, 1.25% and (ii) for Base Rate Loans, 0.25%;

(b) thereafter, for any day, the applicable rate *per annum* set forth below under the caption “**Base Rate Spread**” or “**Term Benchmark Rate Spread**”, respectively, based upon the Average Historical Excess Availability of the Borrower as of the most recent Adjustment Date prior to such day, expressed as a percentage of the Maximum Borrowing Amount:

Category		
	Above or equal to 66 2/3%	0.25%
Category 2	Less than 66 2/3% and above or equal to 33 1/3%	0.50%
Category 3	Less than 33 1/3%	0.75%

The Applicable Rate shall be adjusted quarterly on a prospective basis on each Adjustment Date based upon the Average Historical Excess Availability in accordance with the table above; *provided* that if a Borrowing Base Certificate is not delivered when required pursuant to **Section 6.02(d)**, the “*Applicable Rate*” shall be the applicable rate per annum set forth above in Category 3 until a Borrowing Base Certificate is delivered in compliance with **Section 6.02(f)**.

“*Appropriate Lender*” means, at any time, with respect to Loans of any Class, the Lenders of such Class.

“*Approved Fund*” means, with respect to any Lender, any Fund that is administered, advised or managed by (a) such Lender, (b) an Affiliate or branch of such Lender or (c) an entity or an Affiliate of an entity that administers, advises or manages such Lender.

“*Assignment and Assumption*” means an Assignment and Assumption substantially in the form of **Exhibit D** or any other form approved by the Administrative Agent.

“*Attorney Costs*” means all reasonable and documented in reasonable detail fees, expenses, charges and disbursements of any law firm or other external legal counsel.

“*Attributable Indebtedness*” means, on any date, in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

“*Auto-Renewal Letter of Credit*” has the meaning specified in **Section 2.04(b)(iii)**.

“*Available Tenor*” means, as of any date of determination and with respect to the then-current Benchmark for any currency, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an Interest Period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “*Interest Period*” pursuant **Section 10.01(f)(iv)**.

“*Average Historical Excess Availability*” means, at any Adjustment Date, the quotient, expressed as a percentage obtained by dividing (a) the average daily Specified Excess Availability for the Fiscal Quarter immediately preceding such Adjustment Date (with the Borrowing Base at such time for any such day used to determine “*Specified Excess Availability*”, calculated by

reference to the most recent Borrowing Base Certificate delivered to the Administrative Agent on or prior to such day pursuant to **Section 6.02(f)** by (b) the average daily Line Cap for such Fiscal Quarter.

“**Average Usage**” shall mean, at any Adjustment Date, the average utilization of Revolving Commitments (expressed as a percentage) for the fiscal quarter immediately preceding such Adjustment Date.

“**Bail-In Action**” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“**Bail-In Legislation**” means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“**Bank Products Reserves**” means, collectively, the Designated Cash Management Reserve and Designated Hedging Reserve.

“**Bankruptcy Code**” shall mean Title 11 of the United States Code (11 U.S.C. § 101, et seq.), as amended from time to time.

“**Base Rate**” means for any day a fluctuating rate *per annum* equal to the highest of (a) the Federal Funds Rate *plus* 0.50%, (b) the rate of interest in effect for such day as publicly announced from time to time by the Administrative Agent as its “prime rate”, and (c) the Adjusted Term SOFR for Loans denominated in Dollars on such day for an Interest Period of one month *plus* 1.00% (or, if such day is not a Business Day, the immediately preceding Business Day); *provided* that, notwithstanding the foregoing, the “**Base Rate**” shall in no event be less than 0.00% *per annum*. The “prime rate” is a rate set by the Administrative Agent based upon various factors including the Administrative Agent’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by the Administrative Agent shall take effect at the opening of business on the day specified in the public announcement of such change.

“**Base Rate Loan**” means a Loan denominated in Dollars that bears interest based on the Base Rate.

“**Base Rate SOFR Determination Day**” has the meaning specified in the definition of “Term SOFR”.

“**Benchmark**” means, initially with respect to any (i) amounts denominated in Dollars, Term SOFR Reference Rate; provided that if a Benchmark Transition has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the

applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to **Section 10.01(f)(i)** and (ii) amounts denominated in an Alternative Currency, the risk-free reference rate (RFR) applicable to such Alternative Currency as agreed to by the Administrative Agent, the Borrower and each Revolving Lender providing such Revolving Loans, Incremental Revolving Facilities or Extended Revolving Loans (in its sole discretion).

“Benchmark Replacement” means, with respect to any Benchmark Transition Event for any then-current Benchmark, the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for such Benchmark giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for such Benchmark for syndicated credit facilities denominated in Dollars or in any Alternative Currency, as applicable, at such time and (b) the related Benchmark Replacement Adjustment; provided that, if such Benchmark Replacement as determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for syndicated credit facilities denominated in Dollars or an Alternative Currency at such time.

“Benchmark Replacement Conforming Changes” means, with respect to either the use or administration of an initial Benchmark or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 3.05 and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark for any currency:

- (a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or
- (b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means, with respect to the then-current Benchmark, the occurrence of one or more of the following events with respect to such Benchmark:

- (a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);
- (b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, the central bank for an Alternative Currency applicable to such Benchmark, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

- (c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Transition Start Date**” means, with respect to any Benchmark, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

“**Benchmark Unavailability Period**” means, with respect to any then-current Benchmark for any currency, the period (if any) (x) beginning at the time that a Benchmark Replacement Date with respect to such Benchmark has occurred if, at such time, no Benchmark Replacement has replaced such Benchmark for all purposes hereunder and under any Loan Document in accordance with **Section 10.01(f)** and (y) ending at the time that a Benchmark Replacement has replaced the such Benchmark for all purposes hereunder and under any Loan Document in accordance with **Section 10.01(f)**.

“**Beneficial Ownership Certification**” means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

“**Beneficial Ownership Regulation**” means 31 C.F.R. § 1010.230.

“**Benefit Plan**” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“**BHC Act Affiliate**” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“**Blocked Account Agreement**” has the meaning specified in **Section 6.18(b)**.

“**Blocked Accounts**” has the meaning specified in **Section 6.18(b)**.

“**Board of Directors**” means, as to any Person, the board of directors, board of managers or other governing body of such Person, or if such Person is owned or managed by a single entity, the board of directors, board of managers or other governing body of such entity, and the term “directors” means members of the Board of Directors.

“**Borrower**” has the meaning specified in the introductory paragraph to this Agreement.

“**Borrower Materials**” has the meaning specified in **Section 6.02**.

“**Borrowing**” means a borrowing consisting of Loans of the same Class and Type made, converted or continued on the same date and, in the case of Term Benchmark Loans, having the same Interest Period.

“**Borrowing Base**” means, at any time, an amount equal to

- (a) 90% of the Eligible Accounts held by the Borrowing Base Parties, *plus*
- (b) 90% of the Net Orderly Liquidation Value of Eligible Inventory held by the Borrowing Base Parties, *plus*
- (c) 100% of Qualified Cash of the Borrowing Base Parties as to which the Borrowing Base Parties have no access, *minus*
- (d) the amount of all Reserves in effect as of such date of determination, as the same may at any time and from time to time be established in accordance with **Section 2.22**.

The Borrowing Base at any time shall be determined by reference to the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to **Section 6.02(d)** and Reserves established pursuant to **Section 2.22**; *provided, further*, that the inclusion in the Borrowing Base of any assets or other property acquired in connection with a transaction described in **Section 6.11(a)** shall be subject to the Borrower’s compliance with **Section 6.11(a)** within the time periods set forth therein.

Inventory or Credit Card Processor Accounts acquired after the Closing Date in connection with an acquisition permitted hereunder that would otherwise be Eligible Inventory and Eligible Accounts but for the application of **clause (n)** in the definition of “**Eligible Inventory**” and **clause (k)** in the definition of “**Eligible Accounts**” may be included in the Borrowing Base prior to Administrative Agent receiving a Report in respect of such Credit Card Processor Accounts and Inventory showing results reasonably satisfactory to it for a period of up to 90 days after the acquisition thereof; *provided*, that until such Report is received, the contribution of such acquired Inventory and Credit Card Process Accounts shall not exceed 15% of the Borrowing Base prior to giving effect to inclusion of such Inventory and Credit Card Processor Accounts. At the request of the Borrower, the Administrative Agent may take such actions as reasonably required to obtain or prepare such a Report within 90 days of such acquisition (which Report shall be at the expense of the Borrower and shall not be considered to be any limitation on appraisals and field examinations at the expense of the borrower provided in **Section 6.10(b)**).

“**Borrowing Base Certificate**” means a certificate from the senior vice president (finance), chief financial officer, treasurer, manager of treasury activities or assistant treasurer or other officer with equivalent duties of the Borrower in substantially the form of **Exhibit K**, as such form, subject to the terms hereof, may from time to time be modified as agreed by the Borrower and the Administrative Agent or such other form which is acceptable to the Administrative Agent in its reasonable discretion, and with such changes therein as may be required by the Administrative

Agent in its Permitted Discretion to reflect the components of and Reserves against the Borrowing Base as provided for hereunder from time to time, together with appropriate exhibits, schedules, supporting documentation and additional reports as reasonably requested by the Administrative Agent.

“**Borrowing Base Parties**” means, as of any date, the Borrower and each Guarantor that is a Restricted Subsidiary.

“**Business Day**” means (a) any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the jurisdiction where the Administrative Agent’s Office is located (which, as of the date of this Agreement, is New York, New York) and if such day relates to any interest rate settings as to a Term Benchmark Loan, any fundings, disbursements, settlements and payments in respect of any such Term Benchmark Loan, or any other dealings to be carried out pursuant to this Agreement in respect of any such Term Benchmark Loan, means any such day that is also a U.S. Government Securities Business Day and (b) if such day relates to any interest rate settings as to a Term Benchmark Loan or Letter of Credit denominated in an Alternative Currency, any fundings, settlements, payments and disbursements in such Alternative Currency, or any other dealings in such Alternative Currency to be carried out pursuant to this Agreement in respect of any such Term Benchmark Loan or Letter of Credit, means any such day described in **clause (a)** above which is also a day on which dealings in deposits in such Alternative Currency are conducted by and between banks in the London interbank market and (other than any date that relates to any interest rate setting in respect of such Alternative Currency) any such day on which banks are open for foreign exchange business in the principal financial center of the country of such Alternative Currency.

“**Capital Expenditures**” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Capitalized Leases) by the Borrower and the Restricted Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as capital expenditures on the consolidated statement of cash flows of the Borrower and the Restricted Subsidiaries; **provided** that Capital Expenditures will not include:

(a) expenditures to the extent they are made with proceeds of the issuance of Equity Interests of, or a cash capital contribution to, the Borrower after the Closing Date;

(b) expenditures with proceeds of insurance settlements, condemnation awards and other settlements in respect of lost, destroyed, damaged or condemned assets, equipment or other property to the extent such expenditures are made to replace or repair such lost, destroyed, damaged or condemned assets, equipment or other property or otherwise to acquire, maintain, develop, construct, improve, upgrade or repair assets or properties useful in the business of the Borrower and its Subsidiaries;

(c) interest capitalized during such period;

(d) expenditures that are accounted for as capital expenditures of such Person and that actually are paid for by a third party (excluding the Borrower and any Restricted Subsidiary) and for which none of the Borrower or any Restricted Subsidiary has provided or is required to provide

or incur, directly or indirectly, any consideration or obligation to such third party or any other Person (whether before, during or after such period) (it being understood that notwithstanding the foregoing, landlord financed improvements to leased real properties shall be excluded from “*Capital Expenditures*” pursuant to this **clause (d)**);

(e) the book value of any asset owned by the Borrower or any Restricted Subsidiary prior to or during such period to the extent that such book value is included as a Capital Expenditure during such period as a result of such Person reusing or beginning to reuse such asset during such period without a corresponding expenditure actually having been made in such period; *provided* that any expenditure necessary in order to permit such asset to be reused will be included as a Capital Expenditure during the period that such expenditure is actually made;

(f) the purchase price of equipment purchased during such period to the extent the consideration therefor consists of any combination of (i) used or surplus equipment traded in at the time of such purchase or (ii) the proceeds of a concurrent sale of used or surplus equipment, in each case, in the ordinary course of business;

(g) Investments in respect of a Permitted Acquisition;

(h) the purchase of property, plant or equipment to the extent purchased with the proceeds of Dispositions that are not applied to prepay Term Loans pursuant to **Section 2.04(b)**; or

(i) expenditures used for acquisitions of fee-owned real property, up to the greater of (A) 5.00% of Closing Date EBITDA and (B) 5.00% of TTM Consolidated Adjusted EBITDA on a Pro Forma Basis as of the applicable date of determination during any fiscal year, so long as (i) the Borrower demonstrates to the satisfaction of the Administrative Agent a viable plan that provides for a Sale Leaseback Transaction within one year of acquisition and (ii) the Administrative Agent approves of the exclusion of such expenditures in their reasonable discretion, *provided* if the Borrower and its Subsidiaries fail to complete such Sale Leaseback Transaction within such one-year period, expenditures used for such acquisition shall be included as Capital Expenditures in the fiscal year in which such one-year period expires.

“*Capitalized Lease Obligation*” means, at the time any determination thereof is to be made, the amount of the liability in respect of a Capitalized Lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP.

“*Capitalized Leases*” means all financing leases that have been or are required to be, in accordance with GAAP as in effect on the Closing Date (including the Borrower’s adoption of Accounting Standards Update (ASU) No. 2016-02, Leases (Topic 842)), recorded as financing leases; *provided* that

(a) for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP as in effect on the Closing Date (including the Borrower’s adoption of Accounting Standards Update (ASU) No. 2016-02, Leases (Topic 842)) and

(b) in no event shall an operating lease or a lease that would have been an operating lease prior to the adoption of Accounting Standards Update (ASU) No. 2016-02, Leases (Topic 842) be considered a Capitalized Lease.

“**Captive Insurance Subsidiary**” means any Subsidiary of the Borrower that is subject to regulation as an insurance company (or any Subsidiary thereof).

“**Cash Collateral Account**” means an account held at, and subject to the sole dominion and control of, the Collateral Agent.

“**Cash Collateralize**” means, in respect of an Obligation, to provide and pledge (as a first priority perfected security interest) cash collateral in Dollars, at a location and pursuant to documentation in form and substance satisfactory to the Administrative Agent, the Swing Line Lender or an Issuing Bank, as applicable (and “**Cash Collateralization**” has a corresponding meaning). “**Cash Collateral**” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“**Cash Dominion Period**” means

(a) each period beginning on the occurrence of a Specified ABL Event of Default until such Specified ABL Event of Default has been cured or waived and

(b) each period beginning on the date that Specified Excess Availability shall have been less than the greater of (x) 10.0% of the Line Cap and (y) \$31,250,000 for five consecutive Business Days and ending on the date that Specified Excess Availability shall have been at least the greater of (x) 10.0% of the Line Cap and (y) \$31,250,000 for 20 consecutive calendar days (this **clause (b)**, a “**Liquidity Condition**”). Notwithstanding anything to the contrary herein or in any other Loan Document, the Credit Extensions made on the Closing Date shall not be deemed to give rise to a Liquidity Condition unless and until a Credit Extension is made after the Closing Date and a Liquidity Condition subsequently occurs.

“**Cash Equivalents**” means any of the following types of Investments (including for the avoidance of doubt, cash), to the extent owned by the Borrower or any Restricted Subsidiary:

(a) Dollars and each Alternative Currency;

(b) local currencies held by the Borrower or any Restricted Subsidiary from time to time in the ordinary course of business and not for speculation;

(c) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed or insured by the United States government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 12 months or less from the date of acquisition;

(d) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, demand deposits, bankers’ acceptances with maturities not exceeding one year and overnight bank deposits, in each case with any domestic or

foreign commercial bank having capital and surplus of not less than \$500,000,000 (or the foreign currency equivalent thereof as of the date of such investment);

(e) repurchase obligations for underlying securities of the types described in **clauses (c)** and **(d)** above or **clause (h)** below entered into with any financial institution meeting the qualifications specified in **clause (d)** above;

(f) commercial paper rated at least P-2 by Moody's or at least A-2 by S&P (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency) and in each case maturing within 12 months after the date of creation thereof;

(g) marketable short-term money market and similar highly liquid funds having a rating of at least P-2 or A-2 from Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency);

(h) readily marketable direct obligations issued by any state, commonwealth or territory of the United States or any political subdivision or taxing authority thereof, in each case having an Investment Grade Rating from either Moody's or S&P (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency) with maturities of 12 months or less from the date of acquisition;

(i) Investments with average maturities of 12 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency);

(j) investment funds investing substantially all of their assets in securities of the types described in **clauses (a)** through **(i)** above; and

(k) solely with respect to any Captive Insurance Subsidiary, any investment that a Captive Insurance Subsidiary is not prohibited to make in accordance with applicable Law.

In the case of Investments by any Foreign Subsidiary that is a Restricted Subsidiary or Investments made in a jurisdiction outside the United States of America, Cash Equivalents shall also include (i) investments of the type and maturity described in **clauses (a)** through **(k)** above in foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in **clauses (a)** through **(k)** above and in this paragraph. Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in **clause (a)** or **(b)** above; *provided* that such amounts, except amounts used to pay obligations of the Borrower or any Restricted Subsidiary denominated in any currency other than Dollars or an Alternative Currency in the ordinary course of business,

are converted into Dollars or an Alternative Currency as promptly as practicable and in any event within ten Business Days following the receipt of such amounts.

“**Cash Management Bank**” means any Person that is a Lender or Agent or an Affiliate or branch of a Lender or Agent (a) on the Closing Date (with respect to any Cash Management Services entered into prior to the Closing Date), (b) at the time it initially provides any Cash Management Services to the Borrower or any Restricted Subsidiary, or (c) at the time that the Person to whom the Cash Management Services are provided is merged or amalgamated with the Borrower or becomes or is merged or amalgamated with a Restricted Subsidiary (with respect to any Cash Management Services entered into prior to the date of such merger or amalgamation or such Person becoming a Restricted Subsidiary), in each case whether or not such Person subsequently ceases to be a Lender or Agent or an Affiliate or branch of a Lender or Agent.

“**Cash Management Obligations**” means obligations owed by the Borrower or any Restricted Subsidiary to any Cash Management Bank in respect of or in connection with any Cash Management Services and designated by the Cash Management Bank and the Borrower in writing to the Administrative Agent as “**Cash Management Obligations**” (but only if such Cash Management Services have not been designated as “**Cash Management Obligations**” under the Term Loan Credit Agreement).

“**Cash Management Services**” means any agreement or arrangement to provide cash management services, including treasury, depository, overdraft, credit card processing, credit or debit card, purchase card, electronic funds transfer, supply chain financing programs and other cash management arrangements.

“**Casualty Event**” means any event that gives rise to the receipt by a Loan Party of any property or casualty insurance proceeds or any condemnation or expropriation awards, in each case, in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

“**CFC**” means a “controlled foreign corporation” within the meaning of Section 957(a) of the Code.

“**Change in Law**” means the occurrence, after the date of this Agreement, of any of the following:

- (a) the adoption or taking effect of any law, rule, regulation or treaty (excluding the taking effect after the date of this Agreement of a law, rule, regulation or treaty adopted prior to the date of this Agreement),
- (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or
- (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

It is understood and agreed that (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, H.R. 4173), all Laws relating thereto, all interpretations and applications

thereof and any compliance by a Lender with any and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof or relating thereto and (ii) all requests, rules, guidelines, requirements or directives issued by any United States or foreign regulatory authority in connection with the implementation of the recommendations of the Bank for International Settlements or the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) in each case pursuant to Basel III, shall, for the purposes of this Agreement, be deemed to be adopted subsequent to the date hereof and a Change in Law regardless of the date enacted, adopted, issued, promulgated or implemented. Notwithstanding the foregoing, FATCA (as defined below) shall not be considered a “*Change in Law*.”

“*Change of Control*” means the earliest to occur of:

(a) any Person (other than a Permitted Holder) or Persons (other than one or more Permitted Holders) constituting a “group” (as such term is used in Section 13(d) and Section 14(d) of the Exchange Act, but excluding any employee benefit plan of such Person and its Subsidiaries, and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), becoming the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under such Act), directly or indirectly, of Equity Interests representing more than forty percent (40.00%) of the aggregate ordinary voting power represented by the then issued and outstanding Equity Interests of the Borrower (or Successor Borrower, if applicable) and the percentage of aggregate ordinary voting power so held is greater than the percentage of the aggregate ordinary voting power represented by the Equity Interests of the Borrower (or Successor Borrower, if applicable) beneficially owned (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, in the aggregate by the Permitted Holders, unless the Permitted Holders have, at such time, the right or the ability by voting power, contract or otherwise to elect or designate for election 50% or more of the Board of Directors of the Borrower (or Successor Borrower, if applicable); and

(b) a Change of Control or similar event occurring under the Term Loan Credit Agreement.

“*Charitable Foundation*” means The Petco Foundation, a California Exempt Organization and all related charitable entities.

“*Charitable Foundation Liabilities*” means, at any time, the aggregate remaining balance at such time of amounts and pledges owed by the Borrowing Base Parties to the Charitable Foundations, net of any accounts receivables or payment intangibles owed by the Charitable Foundations to the Borrowing Base Parties.

“*Charitable Reserve*” means, as of any date, an amount equal to 100% of the Charitable Foundation Liabilities as reflected in the Borrowing Base Parties’ books and records.

“*Class*” when used in reference to (a) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans, Swing Line Loans, Protective Advances or Extended Revolving Loans, (b) any Commitment, refers to whether such Commitment is a Commitment in respect of Revolving Loans, Swing Line Loans or a Commitment

in respect of a Class of Loans to be made pursuant to an Extension Amendment and (c) any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class of Loans or Commitments.

“**Closing Date**” means the first date on which all of the conditions precedent in **Section 4.01** are satisfied or waived in accordance with **Section 11.01**.

“**Closing Date ABL Intercreditor Agreement**” means that certain Intercreditor Agreement, dated as of the Closing Date, by and among the Collateral Agent, each Debt Representative under the Term Loan Credit Agreement, and each additional representative from time to time party thereto, as acknowledged by the Loan Parties, as amended, restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof.

“**Closing Date EBITDA**” means \$543,000,000.

“**Closing Date First Lien Net Leverage Ratio**” means 3.00 to 1.00.

“**Closing Date Refinancing**” has the meaning specified in the preliminary statements to this Agreement.

“**Closing Date Secured Net Leverage Ratio**” means 3.00 to 1.00.

“**Closing Date Total Net Leverage Ratio**” means 3.00 to 1.00.

“**Co-Borrower**” has the meaning specified in **Section 1.10**.

“**Co-Borrower Effective Date**” has the meaning specified in **Section 1.10**.

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended from time to time.

“**Collateral**” means all the “**Collateral**” (or equivalent term, including “hypothecated property”) as defined in any Collateral Document and all other property that is subject or purported to be subject to any Lien in favor of the Collateral Agent for the benefit of the Secured Parties pursuant to any Collateral Document, but in any event excluding all Excluded Assets.

“**Collateral Access Agreement**” means a landlord waiver or other agreement, in a form as shall be reasonably satisfactory to the Collateral Agent, between the Collateral Agent and any third party (including any bailee, consignee, customs broker, or other similar Person) in possession of any Collateral or any landlord of any premises where any Collateral is located, as such landlord waiver or other agreement may be amended, restated, or otherwise modified from time to time.

“**Collateral Agent**” has the meaning specified in the introductory paragraph to this Agreement.

“**Collateral Documents**” means, collectively, the Security Agreement, the Intellectual Property Security Agreements, the Security Agreement Supplements, security agreements or other similar agreements delivered to the Agents and the Lenders pursuant to **Sections 4.01(a), 6.11**,

6.12 or **6.15**, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties.

“**Commitments**” means the Revolving Commitments.

“**Committed Loan Notice**” means a notice of a Borrowing pursuant to **Article II**, which, if in writing, shall be substantially in the form of **Exhibit A-1** or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent).

“**Commodity Exchange Act**” means the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*), as amended from time to time, and any successor statute.

“**Company Person**” means any future, current or former officer, director, manager, member, member of management, employee, consultant or independent contractor of the Borrower or any Subsidiary.

“**Compliance Certificate**” means a certificate substantially in the form of **Exhibit C**.

“**Concentration Account**” has the meaning specified in **Section 6.18(b)**.

“**Connection Income Taxes**” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“**Consolidated Adjusted EBITDA**” means, with respect to any Person for any Test Period, the Consolidated Net Income of such Person for such Test Period:

(a) increased, without duplication, by the following items (solely to the extent deducted (and not excluded) in calculating Consolidated Net Income, other than in respect of the proviso in **clause (i)** below and **clauses (ii)(B), (xi), (xix)** and **(xx)** below) of such Person and its Restricted Subsidiaries for such Test Period determined on a consolidated basis in accordance with GAAP:

(i) interest expense, including (A) imputed interest on Capitalized Lease Obligations and Attributable Indebtedness (which, in each case, will be deemed to accrue at the interest rate reasonably determined by a Responsible Officer of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligations or Attributable Indebtedness), (B) commissions, discounts and other fees, charges and expenses owed with respect to letters of credit, bankers’ acceptance financing, surety and performance bonds and receivables financings, (C) amortization and write-offs of deferred financing fees, debt issuance costs, debt discounts, commissions, fees, premium and other expenses, as well as expensing of bridge, commitment or financing fees, (D) payments made in respect of hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, (E) cash contributions to any employee stock ownership plan or similar trust to the extent such contributions are used by such plan or trust to pay interest or fees to any Person (other than such Person or a wholly-owned Restricted Subsidiary) in connection with Indebtedness incurred by such plan or trust, (F) all interest paid or payable

with respect to discontinued operations, (G) the interest portion of any deferred payment obligations, and (H) all interest on any Indebtedness that is (x) Indebtedness of others secured by any Lien on property owned or acquired by such Person or its Restricted Subsidiaries, whether or not the obligations secured thereby have been assumed, but limited to the fair market value of such property, (y) contingent obligations in respect of Indebtedness; **provided** that such interest expense shall be calculated after giving effect to Hedge Agreements related to interest rates (including associated costs), but excluding unrealized gains and losses with respect to such Hedge Agreements or (z) fee and expenses paid to the Administrative Agent (in its capacity as such and for its own account) pursuant to the Loan Documents and fees and expenses paid to the administrative agent, the collateral agent, trustee or other similar Persons for any other Indebtedness permitted by **Section 7.03**; **provided further** that, when determining such interest expense in respect of any Test Period ending prior to the first anniversary of the Closing Date, such interest expense will be calculated by multiplying the aggregate amount of such interest expense accrued since the Closing Date by 365 and then dividing such product by the number of days from and including the Closing Date to and including the last day of such Test Period; *plus*

(ii) taxes based on gross receipts, income, profits or revenue or capital, franchise, excise, property, commercial activity, sales, use, unitary or similar taxes, and foreign withholding taxes, including penalties and interest; *plus*

(iii) depreciation expense and amortization expense (including amortization and similar charges related to goodwill, customer relationships, trade names, databases, technology, software, internal labor costs, deferred financing fees or costs and other intangible assets); *plus*

(iv) non-cash items (**provided** that if any such non-cash item represents an accrual or reserve for potential cash items in any future period, (x) the Borrower may determine not to add back such non-cash item in the current Test Period, (y) to the extent the Borrower decides to add back such non-cash expense or charge, the cash payment in respect thereof in such future period will be subtracted from Consolidated Adjusted EBITDA in such future period), including the following: (A) non-cash expenses in connection with, or resulting from, stock option plans, employee benefit plans or agreements or post-employment benefit plans or agreements, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other similar rights, (B) non-cash currency translation losses related to changes in currency exchange rates (including re-measurements of Indebtedness (including intercompany Indebtedness) and any net non-cash loss resulting from hedge agreements for currency exchange risk), (C) non-cash losses, expenses, charges or negative adjustments attributable to the movement in the mark-to-market valuation of hedge agreements or other derivative instruments, including the effect of FASB Accounting Standards Codification 815 and International Accounting Standard No. 9 and their respective related pronouncements and interpretations, (D) non-cash charges for deferred tax asset valuation allowances, (E) any non-cash impairment charge or asset write-off or write-down related to intangible assets (including goodwill), long-lived assets, and Investments in debt and equity securities, (F) any non-cash charges or losses resulting from any purchase accounting adjustment or any

step-ups with respect to re-valuing assets and liabilities in connection with the Transactions or any Investments either existing or arising after the Closing Date, (G) all non-cash losses from Investments either existing or arising after the Closing Date recorded using the equity method and (H) the excess of GAAP rent expense over actual cash rent paid during such period due to the use of straight line rent for GAAP purposes and (z) any non-cash interest expense; plus

(v) unusual, extraordinary, infrequent, or non-recurring items, whether or not classified as such under GAAP; plus

(vi) charges, costs, losses, expenses or reserves related to:

(A) restructuring (including restructuring charges or reserves, whether or not classified as such under GAAP), severance, relocation, consolidation, integration or other similar items,

(B) strategic and/or business initiatives, business optimization (including costs and expenses relating to business optimization programs, which, for the avoidance of doubt, shall include, without limitation, implementation of operational and reporting systems and technology initiatives; strategic initiatives; retention; severance; systems establishment costs; systems conversion and integration costs; contract termination costs; recruiting and relocation costs and expenses; costs, expenses and charges incurred in connection with curtailments or modifications to pension and post-retirement employee benefits plans; costs to start-up, pre-opening, opening, closure, transition and/or consolidation of distribution centers, operations, officers, stores, pet care centers and other facilities) including in connection with the any Permitted Investment, any acquisition or other investment consummated prior to or after the Closing Date and new systems design and implementation, as well as consulting fees and any one-time expense relating to enhanced accounting function,

(C) business or facilities (including greenfield facilities) start-up, opening, transition, consolidation, shut-down and closing,

(D) signing, retention and completion bonuses,

(E) severance, relocation or recruiting,

(F) public company registration, listing, compliance, reporting and related expenses,

(G) charges and expenses incurred in connection with litigation (including threatened litigation), any investigation or proceeding (or any threatened investigation or proceeding) by a regulatory, governmental or law enforcement body (including any attorney general), and

(H) expenses incurred in connection with casualty events or asset sales outside the ordinary course of business; plus

- (vii) all
 - (A) costs, fees and expenses relating to the Transactions,
 - (B) costs, fees and expenses (including diligence and integration costs) incurred in connection with
 - (x) investments in any Person, acquisitions of the Equity Interests of any Person, acquisitions of all or a material portion of the assets of any Person or constituting a line of business of any Person, and financings related to any of the foregoing or to the capitalization of any Loan Party or any Restricted Subsidiary or
 - (y) other transactions that are out of the ordinary course of business of such Person and its Restricted Subsidiaries (in each case of **clause (x)** and **(y)**, including transactions considered or proposed but not consummated), including Permitted Equity Issuances, Investments, acquisitions, dispositions, recapitalizations, mergers, amalgamations, option buyouts and the incurrence, modification or repayment of Indebtedness (including all consent fees, premium and other amounts payable in connection therewith) and
 - (C) non-operating professional fees, costs and expenses; *plus*
- (viii) items reducing Consolidated Net Income to the extent
 - (A) covered by a binding indemnification or refunding obligation or insurance to the extent actually paid or reasonably expected to be paid,
 - (B) paid or payable (directly or indirectly) by a third party that is not a Loan Party or a Restricted Subsidiary (except to the extent such payment gives rise to reimbursement obligations) or with the proceeds of a contribution to equity capital of such Person by a third party that is not a Loan Party or a Restricted Subsidiary or
 - (C) such Person is, directly or indirectly, reimbursed for such item by a third party; *plus*
- (ix) the amount of management, monitoring, consulting, transaction and advisory fees (including termination fees) and related indemnities and expenses paid, payable or accrued in such Test Period (including any termination fees payable in connection with the early termination of management and monitoring agreements); *plus*
- (x) the effects of purchase accounting, fair value accounting or recapitalization accounting (including the effects of adjustments pushed down to such Person and its Subsidiaries) and the amortization, write-down or write-off of any such amount; *plus*

(xi) proceeds of business interruption insurance actually received (to the extent not counted in any prior period in anticipation of such receipt) or, to the extent not counted in any prior period, reasonably expected to be received; plus

(xii) minority interest expense consisting of income attributable to Equity Interests held by third parties in any non-wholly-owned Restricted Subsidiary; plus

(xiii) all charges, costs, expenses, accruals or reserves in connection with the rollover, acceleration or payout of Equity Interests held by officers or employees and all losses, charges and expenses related to payments made to holders of options or other derivative Equity Interests of such Person or any direct or indirect parent thereof in connection with, or as a result of, any distribution being made to equity holders of such Person or any direct or indirect parent thereof, including (A) payments made to compensate such holders as though they were equity holders at the time of, and entitled to share in, such distribution, and (B) all dividend equivalent rights owed pursuant to any compensation or equity arrangement; plus

(xiv) expenses, charges and losses resulting from the payment or accrual of indemnification or refunding provisions, earn-outs and contingent consideration obligations; bonuses and other compensation paid to employees, directors or consultants; and payments in respect of dissenting shares and purchase price adjustments; in each case, made in connection with a Permitted Investment or other transactions disclosed in the documents referred to in **clause ((xix))** below; plus

(xv) any losses from abandoned, closed, disposed or discontinued operations or operations that are anticipated to become abandoned, closed, disposed or discontinued; plus

(xvi) (A) any costs or expenses (including any payroll taxes) incurred by the Borrower or any Restricted Subsidiary in such Test Period as a result of, in connection with or pursuant to any management equity plan, profits interest or stock option plan or any other management or employee benefit plan or agreement, any pension plan (including (1) any post-employment benefit scheme to which the relevant pension trustee has agreed, (2) as a result of curtailments or modifications to pension and post-retirement employee benefit plans and (3) without limitation, compensation arrangements with holders of unvested options entered into in connection with a permitted Restricted Payment), any stock subscription, stockholders or partnership agreement, any payments in the nature of compensation or expense reimbursement made to independent board members, any employee benefit trust, any employee benefit scheme or any similar equity plan or agreement (including any deferred compensation arrangement), including any payment made to option holders in connection with, or as a result of, any distribution being made to, or share repurchase from, a shareholder, which payments are being made to compensate option holders as though they were shareholders at the time of, and entitled to share in, such distribution or share repurchase and

(B) any costs or expenses incurred in connection with the rollover, acceleration or payout of Equity Interests held by management of the Borrower (and/or any Restricted Subsidiary); plus

(xvii) the amount of loss or discount on sale of receivables, Securitization Assets and related assets to any Securitization Subsidiary in connection with a Qualified Securitization Financing; plus

(xviii) the cumulative effect of a change in accounting principles; plus

(xix) addbacks of the type reflected in (A) the lender presentation used in connection with the syndication of the Facility or (B) any quality of earnings report prepared by a nationally recognized accounting firm and furnished to the Administrative Agent, in connection with any Permitted Investment or other Investment consummated after the Closing Date; plus

(xx) at the Borrower's option, in each case, the amount of "run rate" cost savings, operating expense reductions and other cost synergies that are projected by the Borrower in good faith to result from actions taken, committed to be taken or expected to be taken no later than 24 months after the end of such Test Period (which amounts will be determined by the Borrower in good faith and calculated on a pro forma basis as though such amounts had been realized on the first day of the Test Period for which Consolidated Adjusted EBITDA is being determined), net of the amount of actual benefits realized during such Test Period from such actions; **provided** that, in the good faith judgment of the Borrower such cost savings are reasonably identifiable, reasonably anticipated to be realized and factually supportable (it being agreed such determinations need not be made in compliance with Regulation S-X or other applicable securities law); plus

(xxi) to the extent not included in Consolidated Net Income for such period, cash actually received (or any netting arrangement resulting in reduced cash expenditures) during such period so long as the non-cash gain relating to the relevant cash receipt or netting arrangement was deducted in the calculation of Consolidated Adjusted EBITDA for any previous period and not added back; plus

(xxii) all costs and expenses in connection with pre-opening and opening of stores, distribution centers and other facilities that were not already excluded in calculating such Consolidated Net Income; plus

(xxiii) the amount of any contingent payments in connection with the licensing of intellectual property or other assets; plus

(xxiv) [reserved]; plus

(xxv) [reserved]; plus

(xxvi) any net pension or other post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, including amortization or such amounts arising in prior periods, amortization of the unrecognized net obligation

(and loss or cost) existing at the date of initial application of FASB Accounting Standards Codification 715, and any other items of a similar nature; plus

(xxvii) payments made pursuant to Earnouts and Unfunded Holdbacks; and

(b) decreased, without duplication, by the following items of such Person and its Restricted Subsidiaries for such Test Period determined on a consolidated basis in accordance with GAAP (solely to the extent increasing Consolidated Net Income):

(i) any amount which, in the determination of Consolidated Net Income for such period, has been included for any non-cash income or non-cash gain, all as determined in accordance with GAAP (**provided** that if any non-cash income or non-cash gain represents an accrual or deferred income in respect of potential cash items in any future period, such Person may determine not to deduct the relevant non-cash gain or income in the then-current period); plus

(ii) the amount of any cash payment made during such period in respect of any non-cash accrual, reserve or other non-cash charge that is accounted for in a prior period and that was added to Consolidated Net Income to determine Consolidated Adjusted EBITDA for such prior period and that does not otherwise reduce Consolidated Net Income for the current period; plus

(iii) the excess of actual cash rent paid over rent expense during such period due to the use of straight-line rent for GAAP purposes; plus

(iv) the amount of any income or gain associated with any Restricted Subsidiary that is attributable to any non-controlling interest and/or minority interest of any third party; plus

(v) any net income from disposed or discontinued operations; plus

(vi) any unusual, extraordinary, infrequent or non-recurring gains.

“**Consolidated Interest Expense**” means, for any Test Period, the sum of:

(a) cash interest expense (including that attributable to Capitalized Leases), net of cash interest income, of the Borrower and the Restricted Subsidiaries with respect to all outstanding Indebtedness of the Borrower and the Restricted Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net costs under hedging agreements, plus

(b) non-cash interest expense resulting solely from the amortization of OID from the issuance of Indebtedness of the Borrower and the Restricted Subsidiaries (excluding Indebtedness incurred under this Agreement or the Term Loan Credit Agreement in connection with and to finance the Transactions) at less than par, plus

(c) pay-in-kind interest expense of the Borrower and the Restricted Subsidiaries payable pursuant to the terms of the agreements governing such debt for borrowed money;

but excluding, for the avoidance of doubt,

(i) amortization of deferred financing costs, debt issuance costs, commissions, fees and expenses and any other amounts of non-cash interest other than referred to in **clause (b)** above (including as a result of the effects of acquisition method accounting or pushdown accounting),

(ii) non-cash interest expense attributable to the movement of the mark-to-market valuation of obligations under hedging agreements or other derivative instruments pursuant to FASB Accounting Standards Codification No. 815-Derivatives and Hedging,

(iii) any one-time cash costs associated with breakage in respect of hedging agreements for interest rates,

(iv) commissions, discounts, yield, make whole premium and other fees and charges (including any interest expense) incurred in connection with any receivables financing (including any Qualified Securitization Financing),

(v) any “additional interest” owing pursuant to a registration rights agreement with respect to any securities,

(vi) any payments with respect to make-whole premiums or other breakage costs of any Indebtedness, including any Indebtedness issued in connection with the Transactions,

(vii) penalties and interest relating to taxes,

(viii) accretion or accrual of discounted liabilities not constituting Indebtedness,

(ix) [reserved],

(x) any expense resulting from the discounting of Indebtedness in connection with the application of recapitalization or purchase accounting and

(xi) any interest expense attributable to the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto and with respect to any Acquisition Transaction or other Investment, all as calculated on a consolidated basis in accordance with GAAP.

For the avoidance of doubt, interest expense shall be determined after giving effect to any net payments made or received by the Borrower and its Restricted Subsidiaries in respect of Swap Contracts relating to interest rate protection.

“**Consolidated Net Debt**” means, as of any date of determination, (a) Consolidated Total Debt *minus* (b) the aggregate amount of cash and Cash Equivalents of the Borrower and the Restricted Subsidiaries as of such date that is not Restricted.

“**Consolidated Net Income**” means, with respect to any Person for any Test Period, the Net Income of such Person and its Restricted Subsidiaries determined on a consolidated basis in

accordance with GAAP; **provided**, that there shall be excluded from such consolidated net income (to the extent otherwise included therein), without duplication:

(a) the Net Income for such Test Period of any Person that is not a Subsidiary, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting; **provided** that (i) the Borrower's or any Restricted Subsidiary's equity in the Net Income of such Person shall be included in the Consolidated Net Income of the Borrower for such Test Period up to the aggregate amount of dividends or distributions or other payments in respect of such equity that are actually distributed or could have been distributed, in each case, in cash (or to the extent converted into cash), by such Person to the Borrower or a Restricted Subsidiary, in each case, in such Test Period, to the extent not already included therein (subject in the case of dividends, distributions or other payments in respect of such equity made to a Restricted Subsidiary to the limitations contained in **clause (b)** below) and (ii) without duplication, the Borrower's or any Restricted Subsidiary's equity in the Net Income of such Person that is a Joint Venture shall be included in the Consolidated Net Income of the Borrower for such Test Period up to the ownership percentage of the Borrower or any Restricted Subsidiary in such Joint Venture;

(b) [reserved];

(c) any gain (or loss), together with any related provisions for taxes on any such gain (or the tax effect of any such loss), realized by such Person or any of its Restricted Subsidiaries during such Test Period upon any asset sale or other disposition of any Equity Interests of any Person (other than any dispositions in the ordinary course of business) by such Person or any of its Restricted Subsidiaries;

(d) gains and losses due solely to fluctuations in currency values and the related tax effects determined in accordance with GAAP for such Test Period;

(e) earnings (or losses), including any impairment charge, resulting from any reappraisal, revaluation or write-up (or write-down) of assets during such Test Period;

(f) (i) unrealized gains and losses with respect to Hedge Agreements for such Test Period and the application of Accounting Standards Codification 815 (Derivatives and Hedging), (ii) unrealized gains and losses resulting from mark-to-market adjustments for Investments in marketable securities for such Test Period and (iii) any after-tax effect of income (or losses) for such Test Period that result from the early extinguishment of (A) Indebtedness, (B) obligations under any Hedge Agreements or (C) other derivative instruments;

(g) any extraordinary, infrequent, non-recurring or unusual gain (or extraordinary, infrequent, non-recurring or unusual loss), together with any related provision for taxes on any such gain (or the tax effect of any such loss), recorded or recognized by such Person or any of its Restricted Subsidiaries during such Test Period;

(h) the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such Test Period;

(i) after-tax gains (or losses) on disposal of disposed, abandoned or discontinued operations for such Test Period;

(j) effects of adjustments (including the effects of such adjustments pushed down to such Person and its Restricted Subsidiaries) in the inventory, property and equipment, software, goodwill, other intangible assets, in-process research and development, deferred revenue, debt and unfavorable or favorable lease line items in such Person's consolidated financial statements pursuant to GAAP for such Test Period resulting from the application of purchase accounting in relation to the Transactions or any acquisition consummated prior to the Closing Date and any Permitted Acquisition or other Investment or the amortization or write-off of any amounts thereof, net of taxes, for such Test Period;

(k) any non-cash compensation charge or expense for such Test Period, including any such charge or expense arising from the grants of stock appreciation or similar rights, stock options, restricted stock or other rights and any cash charges or expenses associated with the rollover, acceleration or payout of Equity Interests by, or to, management of such Person or any of its Restricted Subsidiaries in connection with the Transactions;

(l) (i) Transaction Expenses incurred during such Test Period and (ii) any fees and expenses incurred during such Test Period, or any amortization thereof for such Test Period, in connection with any acquisition, Investment, disposition, issuance or repayment of Indebtedness, issuance of Equity Interests (including the Borrower's initial public offering and any follow-on offering of its Equity Interests), refinancing transaction or amendment or modification of any debt or equity instrument (in each case, including any such transaction whether consummated on, after or prior to the Closing Date and any such transaction undertaken but not completed) and any charges or non-recurring costs incurred during such Test Period as a result of any such transaction;

(m) any expenses, charges or losses for such Test Period that are covered by indemnification or other reimbursement provisions in connection with any Investment, Permitted Acquisition or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement, to the extent actually reimbursed, or, so long as the Borrower has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 days); and

(n) to the extent covered by insurance and actually reimbursed, or, so long as the Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed within 365 days of the date of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so reimbursed within such 365 days), expenses, charges or losses for such Test Period with respect to liability or casualty events or business interruption.

“Consolidated Secured Net Debt” means, as of any date of determination, Consolidated Net Debt that is secured by a Lien on the Collateral outstanding as of such date, other than Capitalized Lease Obligations.

“Consolidated Total Debt” means, as of any date of determination, the aggregate principal amount of third party Indebtedness of the Borrower and the Restricted Subsidiaries outstanding on such date, determined on a consolidated basis and as reflected on the face of a balance sheet

prepared in accordance with GAAP (but excluding the effects of the application of purchase accounting in connection with the Transactions, any Permitted Acquisition or any other Investment permitted hereunder), consisting of Indebtedness for borrowed money, unreimbursed obligations in respect of drawn letters of credit (to the extent not cash collateralized), and obligations in respect of Capitalized Leases and purchase money obligations and debt obligations evidenced by promissory notes or debentures; **provided** that Consolidated Total Debt will not include Indebtedness in respect of (a) any Qualified Securitization Financing, (b) any letter of credit, except to the extent of unreimbursed obligations in respect of drawn letters of credit (**provided**, that any unreimbursed amount under commercial letters of credit will not be counted as Consolidated Total Debt until three Business Days after such amount is drawn (it being understood that any borrowing, whether automatic or otherwise, to fund such reimbursement will be counted)), (c) obligations under Hedge Agreements, (d) obligations in respect of cash management obligations, (e) purchase money obligations incurred in the ordinary course, trade payable and earn outs and similar obligations, (f) Indebtedness to the extent it has been cash collateralized, and (g) any lease obligations other than in respect of Capitalized Leases.

“**Contractual Obligation**” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“**Contribution Indebtedness**” means Indebtedness in an aggregate principal amount at the time of the incurrence thereof not to exceed an amount equal to 100.00% of the amount of any Permitted Equity Issuances during the period from and including the Business Day immediately following the Closing Date through and including the reference date that are Not Otherwise Applied.

“**Control**” has the meaning specified in the definition of “**Affiliate**.”

“**Conversion/Continuation Notice**” means a notice of (a) a conversion of Loans from one Type to another or (b) a continuation of Term Benchmark Loans, pursuant to **Article II**, which, if in writing, shall be substantially in the form of **Exhibit A-3**.

“**Corresponding Tenor**” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding Business Day adjustment) as such Available Tenor.

“**Cost**” means the calculated cost of purchases, based upon the Borrower’s accounting practices as reflected in the most recent financial statements delivered pursuant to **Section 6.01(a)**, which practices are consistent with the methodology used in the most recent appraisal delivered in connection with this Agreement prior to the Closing Date.

“**Covenant Trigger Event**” means any date after the last day of the first full fiscal quarter ended after the Closing Date on which Specified Excess Availability shall be less than the greater of (a) 10% of the Line Cap and (b) \$31,250,000 at any time and continuing until Specified Excess Availability is equal to or exceeds the greater of (a) 10% of the Line Cap and (b) \$31,250,000 for twenty (20) consecutive calendar days; **provided** that such \$31,250,000 level shall automatically

increase in proportion to the amount of any increase in the aggregate Revolving Commitments hereunder in connection with any Incremental Facility.

“**Covered Entity**” means any of the following:

- (a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“**Covered Party**” has the meaning specified in **Section 11.26(b)**.

“**Credit Agreement Refinancing Indebtedness**” has the meaning assigned to such term in the Term Loan Credit Agreement (as in effect on the date hereof).

“**Credit Card Notification**” has the meaning assigned to such term in **Section 6.18(b)**.

“**Credit Card Processor**” means any Person (other than a Loan Party or any Affiliate of any Loan Party) who issues or whose members or Affiliates issue credit or debit cards, including MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club and Carte Blanche.

“**Credit Card Processor Accounts**” means Accounts owing to a Loan Party from a Credit Card Processor.

“**Credit Extension**” means each of (i) the making of a Revolving Loan, Swing Line Loan or Protective Advance and (ii) the issuance, amendment, modification, renewal or extension of any Letter of Credit (other than any such amendment, modification, renewal or extension that does not increase the stated amount of the relevant Letter of Credit).

“**Cure Expiration Date**” has the meaning specified in **Section 8.02**.

“**Customer Deposits**” means, at any time, the aggregate balance at such time of outstanding customer deposits of the Borrowing Base Parties, net of any dormancy reserves maintained by the Borrowing Base Parties on their books and records in the ordinary course of business consistent with past practices.

“**Customer Deposits Reserve**” means, as of any date, an amount equal to 100% of the Customer Deposits as reflected in the Borrowing Base Parties’ books and records.

“**Customer Credit Liabilities**” means, at any time, the aggregate remaining balance at such time of (a) outstanding gift certificates and gift cards of the Borrowing Base Parties entitling the holder thereof to use all or a portion of the certificate or gift card to pay all or a portion of the

purchase price for any Inventory and (b) outstanding merchandise credits of the Borrowing Base Parties, net of any dormancy reserves maintained by the Borrowing Base Parties on their books and records in the ordinary course of business consistent with past practices.

“**Customer Credit Liability Reserves**” means, as of any date, an amount equal to 50% of the Customer Credit Liabilities as reflected in the Borrowing Base Parties’ books and records.

“**Customs Broker Agreement**” means an agreement, in form reasonably satisfactory to the Collateral Agent, in which the customs broker or other carrier acknowledges that it has control over and holds the documents evidencing ownership of the subject Inventory for the benefit of the Collateral Agent and agrees, upon notice from the Collateral Agent, to hold and dispose of such Inventory solely as directed by the Collateral Agent.

“**CVC**” means any funds or limited partnerships managed or advised by CVC Advisors (U.S.) Inc., CVC Capital Partners SICAV-FIS S.A. or any of their respective Affiliates or direct or indirect Subsidiaries or any investors in such funds as of the Closing Date or limited partnerships excluding, in each case, any portfolio companies in which such funds or limited partnerships hold an investment other than those through which such funds or limited partnership hold their investment in the Borrower and excluding, in each case, any funds or entities managed or advised by CVC Credit Partners Group Holding Foundation (or any of its direct or indirect Subsidiaries engaged in the same or a similar business to CVC Credit Partners Group Holding Foundation) who are investors in such funds or limited partnerships as of the Closing Date, investing directly or indirectly in the Borrower.

“**Daily Simple SOFR**” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “**Daily Simple SOFR**” for syndicated business loans; **provided**, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

“**DDA**” means any checking, demand deposit or other account maintained by the Loan Parties and used to receive or deposit payments, checks and other funds from customers and other payors.

“**Debt Representative**” means, with respect to any series of Indebtedness secured by a Lien that is subject to an Intercreditor Agreement, or is subordinated in right of payment to all or any part of the Obligations, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“**Debtor Relief Laws**” means the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, arrangement, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally, including any applicable corporations legislation to the extent the relief

sought under such corporations legislation relates to or involves the compromise, settlement, adjustment or arrangement of debt.

“**Default**” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“**Default Rate**” means an interest rate equal to (a) the Base Rate *plus* (b) the Applicable Rate applicable to Base Rate Loans *plus* (c) 2.00% *per annum*; **provided** that with respect to the outstanding principal amount of any Loan not paid when due, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan (giving effect to **Section 2.05(c)**) *plus* 2.00% *per annum*, in each case, to the fullest extent permitted by applicable Laws.

“**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“**Defaulting Lender**” means, subject to **Section 2.19(b)**, any Lender that,

(a) has failed to (i) fund all or any portion of its Loans, including participations in respect of Letters of Credit, Swing Line Loans or Protective Advances within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (which conditions precedent, together with the applicable default, if any, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the Swing Line Lender, the Issuing Banks or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit, Swing Line Loans or Protective Advances) within two Business Days of the date when due,

(b) has notified the Borrower, the Administrative Agent, the Swing Line Lender or the Issuing Banks in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lenders’ obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with the applicable default, if any, shall be specifically identified in such writing or public statement) cannot be satisfied),

(c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (**provided** that such Lender shall cease to be a Defaulting Lender pursuant to this **clause (c)** upon receipt of such written confirmation by the Administrative Agent and the Borrower), or

(d) the Administrative Agent or the Borrower has received notification that such Lender is, or has a direct or indirect parent entity that is, (i) insolvent, or is generally unable to pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of its creditors, (ii) other than via an Undisclosed Administration, the subject of a bankruptcy, insolvency, reorganization, liquidation or similar

proceeding, or a receiver, trustee, conservator, intervenor or sequestrator, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other Federal or state regulatory authority acting in such a capacity or the like has been appointed for such Lender or its direct or indirect parent entity, or such Lender or its direct or indirect parent entity has taken any action in furtherance of or indicating its consent to or acquiescence in any such proceeding or appointment or (iii) become the subject of a Bail-In Action; **provided** that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent entity thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

Any determination by the Administrative Agent or the Borrower that a Lender is a Defaulting Lender under any one or more of **clauses (a)** through **(d)** above shall be conclusive absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to **Section 2.19**) upon delivery of written notice of such determination to the Borrower, the Swing Line Lender, the Issuing Banks and each Lender.

“Designated Cash Management Reserve” means, as of any date, such reserves as the Administrative Agent determines in its Permitted Discretion to reflect (and in no event to exceed) the then aggregate outstanding cash management exposure of all Cash Management Banks to the relevant Loan Parties under all Cash Management Obligations.

“Designated Hedging Agreement” means Secured Hedge Agreements that are designated by the Hedge Bank and the Borrower in writing to the Administrative Agent as a **“Designated Hedging Agreement”** and the Hedge Bank shall have provided the MTM value on the date of such designation.

“Designated Hedging Reserve” means, as of any date, such reserves as the Administrative Agent establishes to reflect (and in no event to exceed) the then aggregate outstanding mark-to-market (**“MTM”**) exposure owed by the relevant Loan Parties to all Hedge Banks under all Designated Hedging Agreements. Such exposure shall be the sum of the positive aggregate MTM values to each Hedge Bank of all Designated Hedging Agreements with such Hedge Bank outstanding at the time of the relevant calculation, in each case, as reflected on the most recent calculation provided to the Administrative Agent. The aggregate MTM value to a Hedge Bank of all Designated Hedging Agreements with such Hedge Bank shall be calculated

(i) on a net basis by taking into account the netting provision contained in the ISDA Master Agreement (or other similar agreement with netting provisions substantially similar to an ISDA Master Agreement) with such Hedge Bank and

(ii) if applicable, by taking into account any master netting agreement or arrangement in place among such Hedge Bank, any Subsidiary or Affiliate thereof that is also party to a Designated Hedging Agreement and the relevant Loan Party, in which case the positive aggregate MTM value of all relevant Designated Hedging Agreements

to such Hedge Bank and such Subsidiaries or Affiliates who are parties to such master netting agreements shall be calculated in respect of all of the relevant Designated Hedging Agreements on a net basis across all such Designated Hedging Agreements, *provided* that the Borrower

(A) certifies to the Administrative Agent that such master netting agreement shall apply to all such Designated Hedging Agreements in all cases including upon the occurrence of an event of default by the relevant Loan Party in respect of any such Designated Hedging Agreement and

(B) upon request, provides to the Administrative Agent a copy of the master netting agreement.

In calculating the positive aggregate MTM value to a Hedge Bank, the value of collateral posted to such Hedge Bank in respect of such Designated Hedging Agreements shall be taken into account, such that the value of such collateral shall reduce the MTM value of such Designated Hedging Agreements that is out-of-the-money to the relevant Loan Party by an amount equal to (x) the amount of cash collateral or (y) the value of non-cash collateral with such value as determined by the relevant Hedge Bank or the relevant valuation agent in accordance with the relevant credit support annex or other collateral agreement (for the avoidance of doubt, taking into account any haircut provision applicable to such non-cash collateral), *provided* that the Borrower shall provide any supporting documentation for such value as may be reasonably requested by the Administrative Agent.

For the avoidance of doubt, if the MTM value of all Designated Hedging Agreements with a Hedge Bank is a negative amount to such Hedge Bank (i.e., if all such Designated Hedging Agreements with such Hedge Bank are in-the-money to the relevant Loan Party on a net basis), such MTM value shall be treated as zero in calculating the amount of the Designated Hedging Reserves. The MTM value of all Designated Hedging Agreement with a Hedge Bank for this purpose shall be calculated and provided by such Hedge Bank to the Administrative Agent, the relevant Loan Party and the Borrower together with the supporting calculations therefor promptly (but in any case not later than three Business Days) following

(x) the last calendar day of each calendar month and

(y) such other date on which a request was made by the Administrative Agent, the relevant Loan party or the Borrower, as applicable, for such MTM value, which shall be used by the Administrative Agent in calculating the relevant portion of the Designated Hedging Reserves.

If a Hedge Bank fails to provide the MTM value of a Designated Hedging Agreement within the relevant timeframe specified above, then the Borrower may (but is not obligated to) provide, together with all of the information reasonably determined by the Administrative Agent as being necessary or appropriate to determine the MTM value of the relevant Designated Hedging Agreement, a proposed MTM value of the relevant Designated Hedging Agreement to the Administrative Agent and applicable Hedge Bank. If the applicable Hedge Bank does not notify the Administrative Agent within three Business Days from receipt thereof that it does not agree

with such MTM value, then the Administrative Agent may use the Borrower's MTM value in calculating the relevant portion of the Designated Hedging Reserves.

The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to a Designated Hedging Reserve (or the calculation of MTM).

“Designated Jurisdiction” means any country or territory to the extent that such country or territory is the subject of any Sanctions.

“Designated Non-Cash Consideration” means the fair market value of any non-cash consideration received by the Borrower or a Restricted Subsidiary in connection with a Disposition pursuant to the General Asset Sale Basket that is designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer (which amount will be reduced by the fair market value of the portion of the non-cash consideration converted to cash within one hundred eighty days following the consummation of the applicable Disposition).

“Disposition” or **“Dispose”** means the sale, transfer, license, lease or other disposition (excluding Liens and any sale of Equity Interests in, or issuance of Equity Interests by, a Restricted Subsidiary, but including, for the avoidance of doubt, any Division) of any property by any Person.

“Disqualified Equity Interests” means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition,

- (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale as long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event is subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments and Cash Collateralization of all Letters of Credit),
- (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part,
- (c) provides for the scheduled payments of dividends that are required to be made only in cash, or
- (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests,

in each case, prior to the Latest Maturity Date of the Loans at the time of issuance; **provided** that if such Equity Interests are issued pursuant to a plan for the benefit of one or more Company Persons or by any such plan to one or more Company Persons, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by the Borrower or the Restricted Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of a Company Person's termination, death or disability.

“**Disqualified Lender**” means,

(a) the competitors of the Borrower and its Subsidiaries identified in writing by or on behalf of the Borrower (i) to the Lead Arrangers on or prior to the Closing Date, or (ii) to the Administrative Agent, from time to time on or after the Closing Date;

(b) (i) any Persons that are engaged as principals primarily in private equity or venture capital (other than a *bona fide* debt fund affiliate of any of the Lead Arrangers) and (ii) those particular banks, financial institutions, other institutional lenders and other Persons, in the case of each of **clauses (i)** and **(ii)**, to the extent identified in writing by or on behalf of the Borrower to the Lead Arrangers on or prior to the Closing Date; and

(c) any Affiliate of a Person described in the preceding **clauses (a)** or **(b)** that (in each case with respect to **clause (a)** above, other than any Affiliates that are banks, financial institutions, bona fide debt funds or investment vehicles that are engaged in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course), in each case, is either reasonably identifiable as such on the basis of its name or is identified as such in writing by or on behalf of the Borrower (i) to the Lead Arrangers on or prior to the Closing Date, or (ii) to the Administrative Agent from time to time on or after the Closing Date.

The Borrower may, in its discretion, make the list of Disqualified Lenders available to any Lender, Participant, or any prospective Lender or Participant, upon request by such Lender, Participant or prospective Lender or Participant, as applicable. The Borrower shall, upon request of any Lender, identify whether any Person identified by such Lender as a proposed assignee or Participant is a Disqualified Lender. To the extent Persons are identified as Disqualified Lenders after the Closing Date pursuant to **clauses (a)** or **(c)** above, the inclusion of such Persons as Disqualified Lenders shall not retroactively apply to prior assignments or participations made in compliance with **Section 11.07** hereof. Notwithstanding the foregoing, if the list of Disqualified Lenders has not been made available to such Lender and, after such Lender’s written request, the Borrower refuses to identify (or declines to identify after two Business Days) whether such proposed assignee or participant is on the list of Disqualified Lenders, then the list of Disqualified Lenders shall not apply to such assignment or participation to be entered into at such time; *provided* that in no event will the Borrower be required to identify to any Lender whether such proposed assignee or participant is on the list of Disqualified Lenders more than once (the “**Disqualified Lender Provisions**”).

“**Division**” has the meaning specified in **Section 1.02(d)**.

“**Document**” has the meaning set forth in Article 9 of the UCC.

“**Dollar**” and “**\$**” mean lawful money of the United States.

“**Dollar Amount**” means, at any time:

(a) with respect to any Loan denominated in Dollars, the principal amount thereof then outstanding (or in which such participation is held);

(b) with respect to any Loan denominated in any Alternative Currency, the principal amount thereof then outstanding in the relevant Alternative Currency converted to Dollars in accordance with **Section 1.09**;

(c) with respect to any Letter of Credit Obligation (or any risk participation therein), (i) if denominated in Dollars, the amount thereof and (ii) if denominated in any Alternative Currency other than Dollars, the amount thereof converted to Dollars in accordance with **Section 1.09**; and

(d) with respect to any other amount (i) if denominated in Dollars, the amount thereof and (ii) if denominated in any currency other than Dollars, the equivalent amount thereof in Dollars as determined by the Administrative Agent or the applicable Issuing Banks, as applicable, on the basis of the Exchange Rate (determined in respect of the most recent relevant date of determination) for the purchase of Dollars with such currency.

“***Domestic Subsidiary***” means any Subsidiary that is organized under the Laws of the United States, any state thereof or the District of Columbia.

“***Earnouts***” means (a) all earnout payments or other contingent payments in connection with any Permitted Investment and (b) Existing Earnouts and Unfunded Holdbacks.

“***EEA Financial Institution***” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in **clause (a)** of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in **clauses (a)** or **(b)** of this definition and is subject to consolidated supervision with its parent.

“***EEA Member Country***” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“***EEA Resolution Authority***” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“***Eligible Accounts***” means all Credit Card Processor Accounts that constitute proceeds from the sale or disposition of Inventory in the ordinary course of business and that are reflected in the most recent Borrowing Base Certificate, except any Credit Card Processor Account with respect to which any of the exclusionary criteria set forth below applies. No Credit Card Processor Account will be an Eligible Account if:

(a) such Credit Card Processor Account has been outstanding for more than five Business Days from the date of sale;

(b) such Credit Card Processor Account is

(i) not subject to the first priority, valid and perfected Lien of the Collateral Agent as to such Credit Card Processor Account or

(ii) is subject to any other Lien, other than

(A) a Lien permitted under Section 7.01(u)(i), 7.01(v) or 7.01(aa)(i), or other Permitted Lien arising by operation of law or

(B) a Lien securing Indebtedness permitted under Section 7.01(b), (h), (i), (j) or (l)

(it being understood that customary offsets to fees and chargebacks in the ordinary course by the credit card or debit card processors will not be deemed violative of this clause (b));

(c) a Borrowing Base Party does not have good, valid and marketable title thereto, free and clear of any Lien (other than (i) Liens granted to the Collateral Agent, for its own benefit and the benefit of the other Secured Parties pursuant to the Collateral Documents, (ii) a junior priority Lien permitted under Section 7.01(u)(i), 7.01(v) or 7.01(aa)(i) or other Permitted Lien arising by operation of law or (iii) a lien securing Indebtedness permitted under Section 7.01(b), (h), (i), (j) or (l));

(d) such Credit Card Processor Account does not constitute the legal, valid and binding obligation of the applicable Credit Card Processor enforceable in accordance with its terms;

(e) such Credit Card Processor Account is disputed, or a claim, counterclaim, discount, deduction, reserve, allowance, recoupment, offset or chargeback has been asserted with respect thereto by the applicable Credit Card Processor (but only to the extent of such dispute, claim, counterclaim, discount, deduction, reserve, allowance, recoupment, offset or chargeback);

(f) such Credit Card Processor Account is owed by a Credit Card Processor that is subject to a bankruptcy proceeding of the type specified in Section 9.01(f) or that is liquidating, dissolving or winding up its affairs or otherwise deemed not creditworthy by the Administrative Agent in its Permitted Discretion;

(g) such Credit Card Processor Account does not conform with a covenant or representation contained herein as to such Credit Card Processor Account;

(h) unless otherwise agreed by the Administrative Agent, the Credit Card Processor is organized or has its principal offices or assets outside the United States;

(i) such Credit Card Processor Account is evidenced by Chattel Paper or an Instrument (each as defined in the Security Agreement) of any kind, or has been reduced to judgment;

(j) such Credit Card Processor Account includes a billing for interest, fees or late charges, but ineligibility will be limited to the extent thereof; or

(k) subject to the last paragraph in the definition of “**Borrowing Base**,” is acquired in connection with a transaction permitted hereunder, the Administrative Agent shall not have received or prepared a Report in respect of such Credit Card Processor Account, which Report shows results reasonably satisfactory to the Administrative Agent.

Anything contained herein to the contrary notwithstanding, for purposes of determining the amount of Eligible Accounts in the Borrowing Base at any time, any Credit Card Processor Account that otherwise meets the requirements for Eligible Accounts may be included in such calculation, subject to the last paragraph in the definition of “**Borrowing Base**” even though the same does not constitute proceeds from the sale or disposition of Inventory; **provided** that such amount will be subject to adjustment as may be required by the Administrative Agent at any time and from time to time to reflect such fact.

If any Credit Card Processor Account at any time ceases to be an Eligible Account, then such Credit Card Processor Account will promptly be excluded from the calculation of the Borrowing Base; **provided** that if any Credit Card Processor Account ceases to be an Eligible Account because of the adjustment of or imposition of new exclusionary criteria pursuant to the succeeding paragraph, the Administrative Agent will not require exclusion of such Credit Card Processor Account from the Borrowing Base until 5 Business Days following the date on which the Administrative Agent gives notice to the Borrower of such ineligibility; **provided** that upon such notice, the Borrower shall not be permitted to borrow any Loans or have any Letters of Credit issued so as to exceed the Borrowing Base after giving effect to such adjustment or imposition of new exclusionary criteria.

The Administrative Agent reserves the right, at any time and from time to time after the Closing Date, to adjust any of the exclusionary criteria set forth above and to establish new criteria, in each case, in its Permitted Discretion (based on an analysis of material facts or events first occurring, or first discovered by the Administrative Agent, after the Closing Date), subject to the necessary approvals set forth in **Section 11.01** in the case of adjustments or new criteria which have the effect of making more credit available than would have been available based upon the criteria in effect on the Closing Date.

“**Eligible Assignee**” means any Person that meets the requirements to be an assignee under **Section 11.07(b)(v)**; **provided** that the following Persons shall not be Eligible Assignees: (a) any Defaulting Lender and (b) any Person that is a Disqualified Lender.

“**Eligible Inventory**” means all Inventory reflected in the most recent Borrowing Base Certificate, except any Inventory with respect to which any of the exclusionary criteria set forth below applies. No item of Inventory will be Eligible Inventory if such item:

(a) is not subject to a first priority (subject to a Lien permitted under **Section 7.01(v)** or **7.02(aa)(i)**) perfected Lien in favor of the Administrative Agent;

(b) is subject to any Lien other than

(i) a Lien in favor of the Collateral Agent, for its own benefit and the benefit of the other Secured Parties pursuant to the Collateral Documents

(ii) a Lien permitted under **Section 7.01(v)** or **7.01(aa)** or other Permitted Lien arising by operation of law or

(iii) a Lien securing Indebtedness permitted under **Section 7.01(b), (h), (i), (j) or (l)** (in each case, on a junior priority basis);

(c) is slow moving (other than Inventory located at a clearance center that has been appropriately priced consistent with the Borrowing Base Parties customary practices), obsolete, unmerchantable, defective, used or unfit for sale;

(d) does not conform in all material respects to the representations and warranties contained in this Agreement or the Security Agreement;

(e) is not owned only by one or more Borrowing Base Parties;

(f) is not finished goods or which constitutes work-in-process, raw materials, packaging and shipping material, supplies, samples, prototypes, displays or display items, bill-and-hold goods, goods that are returned or marked for return (but not held for resale) or repossessed, or which constitutes goods held on consignment or goods which are not of a type held for sale in the ordinary course of business;

(g) is not located in the United States;

(h) (i) is located at any location (other than a retail store or clearance center) leased by a Borrowing Base Party, unless (x) the lessor has delivered to the Collateral Agent a Collateral Access Agreement as to such location or (y) a Reserve for rent, charges, and other amounts due or to become due with respect to such location has been established by the Administrative Agent in its Permitted Discretion or

(ii) is located at retail store or clearance center leased by a Borrowing Base Party and such location is in a Landlord Lien State, unless a Reserve for rent, charges, and other amounts due or to become due with respect to such location has been established by the Administrative Agent in its Permitted Discretion;

(i) is located in any third-party warehouse or is in the possession of a bailee (other than a third-party processor) and is not evidenced by a Document (as defined in Article 9 of the UCC), unless (x) the warehouseman or bailee has delivered to the Collateral Agent a Collateral Access Agreement as to such location or (y) an appropriate Reserve (including for rent, charges and other amounts due or to become due with respect to such location) has been established by the Administrative Agent in its Permitted Discretion;

(j) is being processed offsite at a third party location or outside processor, or is in-transit to or from said third party location or outside processor;

(k) is the subject of a consignment by any Borrower as consignor;

(l) contains or bears any intellectual property rights licensed to any Loan Party by any Person other than a Loan Party unless the Collateral Agent is reasonably satisfied that it may sell or otherwise dispose of such Inventory without (i) infringing the rights of such licensor, (ii) violating any contract with such licensor, or (iii) incurring any liability with respect to payment of royalties other than royalties incurred pursuant to sale of such Inventory under the current licensing agreement relating thereto;

- (m) is not reflected in a current retail stock ledger report of the Borrower or the respective Borrowing Base Party (except as to goods received but not recorded in the retail stock ledger);
- (n) subject to the last paragraph in the definition of “***Borrowing Base***”, is acquired in connection with an acquisition permitted hereunder to the extent Administrative Agent has not received a Report in respect of such Inventory showing results reasonably satisfactory to the Administrative Agent;
- (o) is in transit, except that Inventory in transit will not be deemed ineligible if:
- (i) it has been shipped
 - (A) from a foreign location for receipt by any Borrowing Base Party within forty-five (45) days of the date of shipment (and such shipment has not been delayed beyond such forty-five (45) day delivery time), or
 - (B) from a domestic location for receipt by any Borrowing Base Party within fifteen (15) days of the date of shipment (and such shipment has not been delayed beyond such fifteen (15) day delivery time), but, in either case, which has not yet been delivered to such Borrowing Base Party,
 - (ii) it has been paid for in advance of shipment, is not being shipped by a carrier owned by or affiliated with the vendor;
 - (iii) legal ownership thereof has passed to the applicable Borrowing Base Party (or is retained by the applicable Borrowing Base Party) as evidenced by customary documents of title and such Inventory is not sold by a vendor that has a right to reclaim, divert shipment of, repossess, stop delivery, claim any reservation of title or otherwise assert Lien rights against the Inventory, or with respect to whom any Borrowing Base Party is in default of any obligations;
 - (iv) the Collateral Agent has control over the documents of title which evidence ownership of the subject Inventory (including, if requested by the Collateral Agent, by the delivery of a Customs Broker Agreement); and
 - (v) it is insured to the reasonable satisfaction of the Administrative Agent;
- (p) constitutes operating supplies, packaging or shipping materials, cartons, repair parts, labels or miscellaneous spare parts or other such materials not considered for sale in the ordinary course of business;
- (q) is perishable (it being understood and agreed that (i) perishable Inventory shall include all Inventory consisting of live animals, live food or aquatic plants to the extent the aggregate book value thereof exceeds \$10,000,000 and (ii) pet food (other than live food) shall not be considered perishable Inventory);
- (r) is not located in a Permitted Inventory Location; or

(s) is not reflected in a current perpetual inventory report (other than in transit Inventory that is otherwise Eligible Inventory) of the Borrowing Base Parties.

If any Inventory at any time ceases to be Eligible Inventory, such Inventory will promptly be excluded from the calculation of the Borrowing Base; ***provided, however***, that if any Inventory ceases to be Eligible Inventory because of the adjustment of or imposition of new exclusionary criteria pursuant to the succeeding paragraph, the Administrative Agent will not require exclusion of such Inventory from the Borrowing Base until 5 Business Days following the date on which the Administrative Agent gives notice to the Borrower of such ineligibility; ***provided*** that upon such notice, the Borrower shall not be permitted to borrow any Loans or have any Letters of Credit issued so as to exceed the Line Cap after giving effect to such adjustment or imposition of new exclusionary criteria.

The Administrative Agent reserves the right, at any time and from time to time after the Closing Date, to adjust any of the exclusionary criteria set forth above and to establish new criteria, in each case, its Permitted Discretion (based on an analysis of material facts or events first occurring, or first discovered by the Administrative Agent, after the Closing Date), subject to the necessary approvals set forth in **Section 11.01** in the case of adjustments or new criteria which have the effect of making more credit available than would be available based upon the criteria in effect on the Closing Date.

“***EMU***” means the Economic and Monetary Union as contemplated in the EU Treaty.

“***EMU Legislation***” means the legislative measures of the EMU for the introduction of, changeover to, or operation of the Euro in one or more member states.

“***Environmental Claim***” means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations by any Governmental Authority, or proceedings with respect to any Environmental Liability or pursuant to Environmental Law, including those (a) by any Governmental Authority for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any Environmental Law and (b) by any Person seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief pursuant to any Environmental Law.

“***Environmental Laws***” means any and all Laws relating to the protection of the environment or, to the extent relating to exposure to Hazardous Materials, human health.

“***Environmental Liability***” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities) of any Loan Party or any of the Restricted Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“***Environmental Permit***” means any permit, approval, identification number, license or other authorization required under or issued pursuant to any Environmental Law.

“Equity Interests” means, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in, including any limited or general partnership interest and any limited liability company membership interest) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (but excluding any debt convertible into Equity Interests).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that together with any Loan Party is treated as a single employer within the meaning of Section 414 of the Code or Section 4001 of ERISA. For the avoidance of doubt, when any provision of this Agreement relates to a past event or period of time, the term **“ERISA Affiliate”** includes any Person who was, as to the time of such past event or period of time, an ERISA Affiliate within the meaning of the preceding sentence.

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Loan Party or any of their respective ERISA Affiliates from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any of their respective ERISA Affiliates from a Multiemployer Plan, written notification of any Loan Party or any of their respective ERISA Affiliates concerning the imposition of Withdrawal Liability or written notification that a Multiemployer Plan is insolvent within the meaning of Title IV of ERISA; (d) the filing under Section 4041(c) of ERISA of a notice of intent to terminate a Pension Plan, the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) the imposition of any liability under Title IV of ERISA, other than for the payment of plan contributions or PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any of their respective ERISA Affiliates; (f) the failure to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA) with respect to any Pension Plan; (g) the application for a minimum funding waiver under Section 302(c) of ERISA with respect to a Pension Plan; (h) the imposition of a lien under Section 303(k) of ERISA with respect to any Pension Plan or (i) a determination that any Pension Plan is in “at risk” status (within the meaning of Section 303 of ERISA).

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“EU Treaty” means the Treaty on European Union.

“Euro” and **“€”** mean the single currency of the Participating Member States introduced in accordance with the provisions of Article 109(i)4 of the EU Treaty.

“Event of Default” has the meaning specified in **Section 9.01**.

“**Excess Availability**” shall mean, at any time without duplication, the remainder of:

- (a) the Line Cap at such time, *minus*
- (b) the sum of the Total Utilization of Revolving Commitments of all Lenders at such time.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**Exchange Rate**” means, on any date with respect to any currency, the rate at which such currency may be exchanged into any other currency, as set forth at approximately 11:00 a.m., London time, on such date on the applicable Bloomberg page for such currency. In the event that such rate does not appear on any Bloomberg page, the Exchange Rate shall be determined by reference to such other publicly available service for displaying the exchange rates as may be selected by the Administrative Agent, or, in the event no such service is selected, such Exchange Rate shall instead be the arithmetic average of the spot rates of exchange of the Administrative Agent in the market where its foreign currency exchange operations in respect of such currency are then being conducted, at or about 10:00 a.m., local time, on such date for the purchase of the relevant currency for delivery two Business Days later; **provided** that, if at the time of any such determination, for any reason no such spot rate is being quoted, the Administrative Agent, after consultation with the Borrower, may use any reasonable method that it deems appropriate to determine such rate, and such determination shall be presumed correct absent manifest error.

“**Excluded Accounts**” means deposit accounts (a) established (or otherwise maintained) by the Loan Parties that do not have cash balances at any time exceeding \$5,000,000 in the aggregate for all such accounts and \$500,000 per account, (b) solely containing cash allocated as proceeds of the sale of Term Priority Collateral pursuant to the Closing Date ABL Intercreditor Agreement, (c) any Trust Fund Account, (d) used by the Loan Parties exclusively for disbursements and payments (including payroll) in the ordinary course of business, (e) that are zero balance accounts, (f) subject to a Lien permitted under **Section 7.01(oo)** or **(g)** that are located outside of the United States (other than any such deposit account containing the proceeds of a sale of ABL Priority Collateral).

“**Excluded Asset**” has the meaning specified in the Security Agreement.

“**Excluded Equity Interests**” has the meaning specified in the Security Agreement.

“**Excluded Subsidiary**” means:

- (a) any Subsidiary that is not a wholly owned Subsidiary of a Loan Party;
- (b) any Foreign Subsidiary of the Borrower or of any direct or indirect Domestic Subsidiary or Foreign Subsidiary;
- (c) any FSHCO;
- (d) any Domestic Subsidiary that is a direct or indirect Subsidiary of a Foreign Subsidiary that is a CFC;

(e) any Subsidiary that is prohibited or restricted by applicable Law from providing a Guaranty or by a binding contractual obligation existing on the Closing Date or at the time of the acquisition of such Subsidiary (and not incurred in contemplation of such acquisition) from providing a Guaranty (*provided* that such contractual obligation is not entered into by the Borrower or its Restricted Subsidiaries principally for the purpose of qualifying as an “*Excluded Subsidiary*” under this definition) or if such Guaranty would require governmental (including regulatory) or third party (other than the Borrower or a Restricted Subsidiary) consent, approval, license or authorization, unless such consent, approval, license or authorization has been obtained;

(f) any special purpose securitization vehicle (or similar entity) including any Securitization Subsidiary created pursuant to a transaction permitted under this Agreement;

(g) any Subsidiary that is a not-for-profit organization;

(h) any Captive Insurance Subsidiary;

(i) any other Subsidiary with respect to which, as reasonably determined by the Borrower in good faith and in consultation with the Administrative Agent, the cost or other consequences (including any material adverse tax consequences) of providing the Guaranty shall be excessive in view of the benefits to be obtained by the Lenders therefrom;

(j) any other Subsidiary to the extent the provision of a Guaranty by such Subsidiary would result in material adverse tax consequences to the Borrower, the Borrower or any of the Restricted Subsidiaries as reasonably determined by the Borrower in good faith in consultation with the Administrative Agent;

(k) any Unrestricted Subsidiary; and

(l) any Immaterial Subsidiary;

provided that the Borrower, in its sole discretion, may cause any Restricted Subsidiary that is a Domestic Subsidiary that qualifies as an Excluded Subsidiary under clauses (a) through (l) above to become a Guarantor in accordance with the definition thereof (subject to completion of any requested “know your customer” and similar requirements of the Administrative Agent) and thereafter such Subsidiary shall not constitute an “*Excluded Subsidiary*” (unless and until the Borrower elects, in its sole discretion, to designate such Persons as an Excluded Subsidiary); *provided, further*, that the Borrower may designate such Subsidiary as an Excluded Subsidiary so long as such Subsidiary otherwise qualifies as an Excluded Subsidiary at the time of such designation.

“*Excluded Swap Obligation*” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to any keepwell, support or other agreement for the benefit of such Guarantor and any and all guaranties

of such Guarantor's Swap Obligations by other Loan Parties) at the time the Guaranty of such Guarantor, or a grant by such Guarantor of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guaranty or security interest is or becomes excluded in accordance with the first sentence of this definition.

“Excluded Taxes” has the meaning specified in **Section 3.01(a)**.

“Existing Earnouts and Unfunded Holdbacks” means those earnouts and unfunded holdbacks existing on the Closing Date.

“Existing Indebtedness” has the meaning specified in the Recitals.

“Existing Indebtedness Documents” means

(a) that certain Term Loan Credit Agreement, dated as of January 26, 2016 among Petco Animal Supplies, Inc. (f/k/a Pet Acquisition Merger Sub LLC, a Delaware limited liability company) as successor borrower, the lenders party thereto from time to time and Citibank, N.A., as administrative agent and as collateral agent (as amended by the First Amendment Agreement dated as of June 17, 2016 and the Second Amendment Agreement dated as of January 27, 2017, and as further amended, amended and restated, supplemented or otherwise modified from time to time, the ***“Existing First Lien Credit Agreement”***) and

(b) that certain Revolving Credit Agreement, dated as of January 26, 2016, among Petco Animal Supplies, the lenders party thereto and Citibank, N.A., as administrative agent and collateral agent (as may be amended, restated, supplemented or otherwise modified from time to time, the ***“Existing ABL Credit Agreement”***).

“Existing Letter of Credit” has the meaning specified in **Section 2.04(j)**.

“Extended Commitments” means Extended Revolving Commitments.

“Extended Loans” means Extended Revolving Loans.

“Extended Revolving Commitments” means the Revolving Commitments held by an Extending Lender.

“Extended Revolving Loans” means the Revolving Loans made pursuant to Extended Revolving Commitments.

“Extending Lender” means each Lender accepting an Extension Offer.

“Extension” has the meaning specified in **Section 2.18(a)**.

“Extension Amendment” has the meaning specified in **Section 2.18(b)**.

“Extension Offer” has the meaning specified in **Section 2.18(a)**.

“**Facility**” means the Revolving Loans, the Swing Line Loans, Extended Revolving Commitments or any Extended Revolving Loans, as the context may require.

“**FATCA**” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, and intergovernmental agreements entered into in connection with the foregoing, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities implementing such Sections of the Code.

“**FCPA**” means the United States Foreign Corrupt Practices Act of 1977, as amended or modified from time to time.

“**Federal Funds Rate**” means, for any day, the rate calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; **provided** that if the Federal Funds Rate for any day is less than zero, the Federal Funds Rate for such day will be deemed to be zero.

“**Financial Covenant Event of Default**” has the meaning specified in **Section 9.01(b)**.

“**First Lien Net Leverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated Secured Net Debt under (i) this Agreement, (ii) any Pari Passu Lien Debt, (iii) the Term Loan Facility and (iv) Indebtedness secured on a pari passu basis with the Obligations on the ABL Priority Collateral, in each case, outstanding as of the last day of such Test Period to (b) Consolidated Adjusted EBITDA of the Borrower for such Test Period.

“**Fixed Charge Consolidated Interest Expenses**” means, with respect to any Person for any period, the sum, without duplication, of:

(a) the aggregate interest expense of such Person and its Restricted Subsidiaries for such period, calculated on a consolidated basis in accordance with GAAP, to the extent such expense was deducted in computing Consolidated Net Income (including pay-in-kind interest payments, amortization of original issue discount, the interest component of Capital Lease Obligations and net payments and receipts (if any) pursuant to Hedge Agreements relating to interest rates (other than in connection with the early termination thereof) but excluding any non-cash interest expense attributable to the movement in the mark-to-market valuation of hedging obligations, all amortization and write-offs of deferred financing fees, debt issuance costs, commissions, fees and expenses and expensing of any bridge, commitment or other financing fees and all discounts, commissions, fees and other charges associated with any Receivables Facility); plus

(b) consolidated capitalized interest of the referent Person and its Restricted Subsidiaries for such period, whether paid or accrued; plus

(c) any amounts paid or payable in respect of interest on Indebtedness the proceeds of which have been contributed to the referent Person and that has been Guaranteed by the referent Person; less

(d) interest income of the referent Person and its Restricted Subsidiaries for such period;

provided that when determining Fixed Charge Consolidated Interest Expense in respect of any four-quarter period ending prior to the first anniversary of the Closing Date, Fixed Charge Consolidated Interest Expense will be calculated by multiplying the aggregate Fixed Charge Consolidated Interest Expense accrued since the Closing Date by 365 and then dividing such product by the number of days from and including the Closing Date to and including the last day of such period. For purposes of this definition, interest on Capital Lease Obligations will be deemed to accrue at the interest rate reasonably determined by a Responsible Officer of the Borrower to be the rate of interest implicit in such Capital Lease Obligations in accordance with GAAP.

“**Fixed Charge Coverage Ratio**” means, as of any date, the ratio of:

(a) (i) Consolidated Adjusted EBITDA for the Test Period ended as of such date or, as applicable, most recently ended prior to such date, less

(ii) non-financed Maintenance Capital Expenditures of the Borrower for such period that were paid in cash for the Test Period (it being understood that Capital Expenditures funded with proceeds of revolving loans will not be deemed to be “financed” for the purpose of this **clause (ii)**), less

(iii) Taxes based on income of the Borrower and the Restricted Subsidiaries that were paid or required to be paid in cash for the Test Period ended as of such date or, as applicable, most recently ended prior to such date, to

(b) Fixed Charges for the Test Period as of such date.

“**Fixed Charges**” means, with respect to any Test Period, without duplication, the sum of

(a) Fixed Charge Consolidated Interest Expense of the Borrower that was paid or required to be paid in cash in such Test period, *plus*

(b) all scheduled principal amortization payments that were paid or required to be paid in cash during such period with respect to Indebtedness for borrowed money of the Borrower and the Restricted Subsidiaries, including payments in respect of Capitalized Lease Obligations, but excluding payments with respect to intercompany Indebtedness, *plus*

(c) all cash dividend payments (excluding items eliminated in consolidation) on any series of Disqualified Equity Interests of the Borrower or preferred stock of any Restricted Subsidiary made during such period.

“**Floor**” means the benchmark rate floor, if any, provided in this Agreement initially (as of the date of execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to any applicable Benchmark.

“**Foreign Lender**” has the meaning specified in Section 3.01(b).

“**Foreign Plan**” means any material employee benefit plan, program or agreement maintained or contributed to by, or entered into with, the Borrower or any Restricted Subsidiary of the Borrower with respect to employees employed outside the United States (other than benefit plans, programs or agreements that are mandated by applicable Laws).

“**Foreign Subsidiary**” means any direct or indirect Subsidiary of the Borrower that is not a Domestic Subsidiary.

“**FRB**” means the Board of Governors of the Federal Reserve System of the United States.

“**Fronting Exposure**” means, at any time there is a Defaulting Lender, (a) with respect to the Issuing Banks, such Defaulting Lender’s Pro Rata Share of the outstanding Letters of Credit Obligations other than such Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof and (b) with respect to the Swing Line Lender, such Defaulting Lender’s Pro Rata Share of the outstanding Obligations with respect to Swing Line Loans extended by the Swing Line Lender other than such Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

“**FSHCO**” means any direct or indirect Subsidiary of the Borrower (including a disregarded entity) substantially all of the assets of which consist of equity Interests and/or Indebtedness (including any debt or other instrument treated as equity for U.S. federal income tax purposes) of one or more Foreign Subsidiaries that are CFCs or other FSHCOs.

“**Fund**” means any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course.

“**GAAP**” means generally accepted accounting principles in the United States, as in effect from time to time; **provided however** that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision of a Loan Document to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof (including through the adoption of IFRS (any such change, an “**Accounting Change**”)) on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof (including through the adoption of IFRS), then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

“**General Asset Sale Basket**” has the meaning specified in Section 7.05(j).

“**Global Intercompany Note**” means a promissory note substantially in the form of **Exhibit H** executed by the Borrower and each wholly owned Restricted Subsidiary.

“**Governmental Authority**” means the government of the United States or any other nation, or of any political subdivision thereof, whether state, provincial, territorial, municipal or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“**Grant Event**” means the occurrence of any of the following:

- (a) the formation or acquisition by a Loan Party of a new wholly owned Subsidiary (other than an Excluded Subsidiary);
- (b) the designation in accordance with **Section 6.13** of a wholly owned Subsidiary (other than an Excluded Subsidiary) of any Loan Party as a Restricted Subsidiary;
- (c) any Person (other than an Excluded Subsidiary) becoming a wholly owned Subsidiary of a Loan Party;
- (d) any wholly owned Restricted Subsidiary of a Loan Party ceasing to be an Excluded Subsidiary;
or
- (e) the designation of any Restricted Subsidiary as a Guarantor pursuant to the proviso in the definition of “**Excluded Subsidiary**”.

“**Granting Lender**” has the meaning specified in **Section 11.07(g)**.

“**Guarantee**” means, as to any Person, without duplication,

- (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect,
 - (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation,
 - (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary obligation,
 - (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation, or

(iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or

(b) any Lien (other than a Permitted Lien) on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term “**Guarantee**” shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary, Permitted Liens and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness).

The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “**Guarantee**” as a verb has a corresponding meaning.

“**Guarantors**” means each Restricted Subsidiary of the Borrower that executed a counterpart to the Guaranty (or a joinder thereto) on the Closing Date or thereafter pursuant to **Section 6.11**, in each case, other than any Excluded Subsidiaries.

“**Guaranty**” means (a) the guaranty made by the Guarantors in favor of the Administrative Agent on behalf of the Secured Parties substantially in the form of **Exhibit E** and (b) each other guaranty and guaranty supplement delivered pursuant to **Section 6.11**.

“**Guaranty Release Event**” has the meaning specified in **Section 10.11(b)(i)(H)**.

“**Guaranty Supplement**” means the “**ABL Guarantee Supplement**” as defined in the Guaranty.

“**Hazardous Materials**” means any hazardous or toxic chemicals, materials, substances or waste which is listed, classified or regulated by any Governmental Authority as “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic wastes,” “contaminants” or “pollutants,” or words of similar import, under any Environmental Law, including petroleum or petroleum products (including gasoline, crude oil or any fraction thereof), asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas and urea formaldehyde.

“**Hedge Agreement**” means any agreement with respect to

(a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot

contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and

(b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “*Master Agreement*”), including any such obligations or liabilities under any Master Agreement.

“*Hedge Bank*” means any Person that is an Agent, a Lender, a Lead Arranger or an Affiliate or branch of any of the foregoing on the Closing Date (with respect to any Secured Hedge Agreement entered into on or prior to the Closing Date) or at the time it enters into a Secured Hedge Agreement, in its capacity as a party thereto, whether or not such Person subsequently ceases to be an Agent, a Lender, a Lead Arranger or an Affiliate or branch of any of the foregoing.

“*HMT*” means Her Majesty’s Treasury of the United Kingdom.

“*Identified Transaction*” has the meaning specified in [Section 10.11\(c\)](#).

“*IFRS*” means International Financial Reporting Standards and applicable accounting requirements set by the International Accounting Standards Board or any successor thereto (or the Financial Accounting Standards Board, the Accounting Principles Board of the American Institute of Certified Public Accountants, or any successor to either such Board, or the SEC, as the case may be), as in effect from time to time.

“*Immaterial Subsidiary*” means any Subsidiary of the Borrower other than a Material Subsidiary or any Co-Borrower.

“*Incremental Amendment*” has the meaning specified in [Section 2.16\(e\)](#).

“*Incremental Amount*” means the greater of (i) \$215,000,000 and (ii) the Borrowing Base then in effect at the time of the effectiveness of such Incremental Amendment.

“*Incremental Equivalent Debt*” has the meaning assigned to such term in the Term Loan Credit Agreement (as in effect on the date hereof).

“*Incremental Facility*” has the meaning specified in [Section 2.16\(a\)](#).

“*Incremental Revolving Facilities*” has the meaning specified in [Section 2.16\(a\)](#).

“*Incremental Revolving Facility Lender*” has the meaning specified in [Section 2.16\(i\)](#).

“*Incremental Revolving Loans*” has the meaning specified in [Section 2.16\(a\)](#).

“*Indebtedness*” means, with respect to any Person, without duplication,

(a) any indebtedness (including principal or premium) of such Person in respect of borrowed money; any indebtedness evidenced by bonds, notes, debentures, loan agreements or similar instruments; letters of credit or bankers' acceptances (or, without double counting, reimbursement agreements in respect thereof), and Capitalized Lease Obligations or the balance deferred and unpaid of the purchase price of any property to the extent that the same would be required to be shown as a long-term liability on the balance sheet for such Person prepared in accordance with GAAP;

(b) (i) to the extent not otherwise included, any guarantee obligation by such Person of the obligations of the type referred to in **clause (a)** of another Person (whether or not such items would appear upon the balance sheet of such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business and (ii) to the extent not otherwise included, the obligations of the type referred to in **clause (a)** of another Person secured by a Lien (other than a Permitted Lien) on any property owned by such Person, whether or not such obligations are assumed by such Person and whether or not such obligations would appear upon the balance sheet of such Person; **provided** that the amount of such Indebtedness for purposes of this **clause (ii)** will be the lesser of the fair market value of such property at such date of determination and the amount of Indebtedness so secured;

(c) net obligations of such Person under any Hedge Agreement to the extent such obligations would appear as a net liability on a balance sheet of such Person (other than in the footnotes) prepared in accordance with GAAP; and

(d) all obligations of such Person in respect of Disqualified Equity Interests;

provided that, notwithstanding the foregoing, Indebtedness will be deemed not to include (1) contingent obligations incurred in the ordinary course of business unless and until such obligations are non-contingent, (2) trade payables, (3) customary purchase money obligations incurred in the ordinary course, (4) earn-outs, purchase price holdbacks or similar obligations, (5) intercompany liabilities in the ordinary course of business, (6) Permitted Liens, (7) loans and advances made by Loan Parties having a term not exceeding 364 days (inclusive of any roll over or extension of terms (such loans and advances, "**Short Term Advances**")), (8) Indebtedness of any direct or indirect parent company appearing on the balance sheet of such Person solely by reason of push down accounting under GAAP and (9) lease obligations other than in respect of a Capitalized Lease. The amount of any net obligation under any Hedge Agreement on any date shall be deemed to be the Swap Termination Value thereof as of such date.

"Indemnified Liabilities" has the meaning specified in **Section 11.05(e)**.

"Indemnitees" has the meaning specified in **Section 11.05**.

"Independent Financial Advisor" means an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that is, in the good faith judgment of the Borrower, qualified to perform the task for which it has been engaged and that is independent of the Borrower and its Affiliates.

"Information" has the meaning specified in **Section 11.08**.

“**Initial Term Loans**” has the meaning assigned to such term in the Term Loan Credit Agreement.

“**Intellectual Property**” has the meaning specified in the Security Agreement.

“**Intellectual Property Security Agreements**” has the meaning specified in the Security Agreement.

“**Intercreditor Agreements**” means the Closing Date ABL Intercreditor Agreement or any other intercreditor agreement governing lien priority, in each case reasonably acceptable to the Collateral Agent and executed from time to time pursuant to the terms hereof.

“**Interest Coverage Ratio**” means, as of any date, the ratio of (a) Consolidated Adjusted EBITDA to (b) Consolidated Interest Expense, in each case for the Test Period as of such date.

“**Interest Payment Date**” means, (a) as to any Term Benchmark Loan, the last day of each Interest Period applicable to such Term Benchmark Loan and the applicable Maturity Date; **provided** that if any Interest Period for a Term Benchmark Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates, and (b) as to any Base Rate Loan (including a Swing Line Loan), the last day of each calendar quarter and the applicable Maturity Date.

“**Interest Period**” means, as to each Term Benchmark Loan, the period commencing on the date such Term Benchmark Loan is disbursed or converted to or continued as a Term Benchmark Loan and ending on the date one, three or six months thereafter, or to the extent consented to by each applicable Lender, twelve months (or such period of less than one month as may be consented to by each applicable Lender), as selected by the Borrower in its Committed Loan Notice; **provided** that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Business Day;

(b) any Interest Period (other than an Interest Period having a duration of less than one month) that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the applicable Maturity Date.

“**Inventory**” means, with respect to a Person, all of such Person’s now owned and hereafter acquired inventory (as defined in the UCC), goods and merchandise, wherever located, in each case, to be furnished under any contract of service or held for sale or lease, all returned goods, raw materials, work-in-process, finished goods (including embedded software), other materials, and supplies of any kind, nature or description which are used or consumed in such Person’s business or used in connection with the packing, shipping, advertising, selling, or finishing of such goods,

merchandise and other property, and all documents of title or other documents representing the foregoing.

“**Investment**” means, as to any Person, any direct or indirect acquisition or investment by such Person, by means of:

(a) the purchase or other acquisition (including by merger, amalgamation or otherwise) of Equity Interests or debt or other securities of another Person;

(b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person, but excluding any Short Term Advances; or

(c) the purchase or other acquisition (in one transaction or a series of transactions, including by merger, amalgamation or otherwise) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of another Person.

provided that none of the following shall constitute an Investment (i) intercompany advances between and among the Borrower and its Restricted Subsidiaries relating to their cash management, tax and accounting operations in the ordinary course of business and (ii) intercompany loans, advances or Indebtedness between and among the Borrower and its Restricted Subsidiaries having a term not exceeding 364 days and made in the ordinary course of business.

“**Investment Grade Rating**” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P, or an equivalent rating by any other nationally recognized statistical rating agency selected by the Borrower.

“**IRS**” means Internal Revenue Service of the United States.

“**ISDA Definitions**” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“**Issuance Notice**” means an Issuance Notice in respect of letters of credit substantially in the form of **Exhibit A-2**.

“**Issuing Bank**” means as the context may require, each of means each of Citibank, Goldman Sachs Bank USA, Bank of America, N.A., Credit Suisse AG, Cayman Islands Branch, UBS AG, Stamford Branch, Wells Fargo Bank, National Association, Capital One, National Association and any other Lender that, at the request of the Borrower and with the consent of the Administrative Agent (not to be unreasonably withheld), agrees to become an Issuing Bank in accordance with **Section 2.04(k)** or **(m)** and (i) solely with respect to any Existing Letter of Credit (and any amendment, renewal or extension thereof in accordance with this Agreement), the Lender or Affiliate or branch of a Lender that issued such Existing Letter of Credit. Each Issuing Bank

may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates or branches of such Issuing Bank (or other financial institution), in which case the term “**Issuing Bank**” shall include any such Affiliate or branch (or other financial institution) with respect to Letters of Credit issued by such Affiliate or branch (or other financial institution).

“**Joint Bookrunners**” has the meaning specified in the introductory paragraph to this Agreement.

“**Joint Venture**” means (a) any Person which would constitute an “equity method investee” of the Borrower or any of the Restricted Subsidiaries and (b) any Person in whom the Borrower or any of the Restricted Subsidiaries beneficially owns any Equity Interest that is not a Restricted Subsidiary.

“**Joint Venture Investments**” means Investments in any Joint Venture (other than an Unrestricted Subsidiary) in an aggregate amount not to exceed the greater of (a) 25.00% of Closing Date EBITDA and (b) 25.00 % of TTM Consolidated Adjusted EBITDA as of the applicable date of determination *provided* that, in the case of any Investment, no Specified Event of Default has occurred or is continuing or would result therefrom.

“**Judgment Currency**” has the meaning specified in Section 2.21(b).

“**Junior Debt Repayment**” has the meaning specified in Section 7.09(a).

“**Junior Financing**” means any Material Indebtedness that is contractually subordinated in right of payment to the Obligations expressly by its terms.

“**Junior Financing Documentation**” means any documentation governing any Junior Financing.

“**Junior Lien Debt**” means any Indebtedness that is intended by the Borrower to be secured by a Lien on all or any portion of the Collateral that has a priority that is contractually (or otherwise) junior in priority to the Lien on such Collateral that secure the Term Loan Obligations.

“**Landlord Lien Reserve**” means any reserve established by the Collateral Agent pursuant to clause (h) of the definition of “**Eligible Inventory**.”

“**Landlord Lien State**” means any state in which a landlord’s claim for rent has priority by law over the Lien of the Collateral Agent in any of the Collateral.

“**Latest Maturity Date**” means, at any date of determination, the latest maturity or expiration date applicable to any Loan or Commitment hereunder at such time, including the latest maturity or expiration date of any Extended Revolving Commitment, in each case as extended in accordance with this Agreement from time to time.

“**Laws**” means, collectively, all international, foreign, federal, state, provincial, territorial, municipal and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities and executive orders, including the interpretation or administration thereof by any Governmental Authority charged with the

enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

“**LCA Election**” has the meaning specified in **Section 1.08(f)**.

“**LCA Test Date**” has the meaning specified in **Section 1.08(f)**.

“**Lead Arrangers**” has the meaning specified in the introductory paragraph to this Agreement.

“**Lender**” has the meaning specified in the introductory paragraph to this Agreement (and, for the avoidance of doubt, includes each Revolving Lender), and their respective successors and assigns as permitted hereunder, each of which is referred to herein as a “**Lender**.” Each Additional Lender shall be a Lender to the extent any such Person has executed and delivered an Incremental Amendment, as the case may be, and to the extent such Incremental Amendment shall have become effective in accordance with the terms hereof and thereof, and each Extending Lender shall continue to be a Lender. As of the Closing Date, **Schedule 2.01** sets forth the name of each Lender. Unless the context otherwise requires, the term “**Lenders**” includes the Issuing Banks and the Swing Line Lender. Notwithstanding the foregoing, no Disqualified Lender that purports to become a Lender hereunder (notwithstanding the provisions of this Agreement that prohibit Disqualified Lenders from becoming Lenders) shall be entitled to any of the rights or privileges enjoyed by the other Lenders (including with respect to voting, information and lender meetings) and shall be deemed for all purposes to be, at most, a Defaulting Lender (except for purposes of **Section 2.19(d)**) until such time as such Disqualified Lender no longer owns any Loans or Commitments.

“**Lending Office**” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“**Letter of Credit**” means a letter of credit issued or to be issued by any Issuing Bank pursuant to this Agreement, including Existing Letters of Credit, which letter of credit shall be (a) a standby letter of credit or (b) solely to the extent agreed by the applicable Issuing Bank in its sole discretion, a commercial or “trade” letter of credit.

“**Letter of Credit Advance**” means, as to any Revolving Lender, such Lender’s funding of its participation in any Letter of Credit Borrowing in accordance with its Pro Rata Share.

“**Letter of Credit Application**” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the applicable Issuing Bank, together with an Issuance Notice.

“**Letter of Credit Borrowing**” means an extension of credit resulting from a drawing under any Letter of Credit that has not been reimbursed by the Borrower on the date when made or refinanced as a Revolving Loan Borrowing.

“**Letter of Credit Documents**” means, as to any Letter of Credit, each Letter of Credit Application and any other document, agreement and instrument entered into by the applicable Issuing Bank and the Borrower or in favor of such Issuing Bank and relating to such Letter of Credit.

“**Letter of Credit Expiration Date**” means the day that is five Business Days prior to the Revolving Commitment Maturity Date or such other day as the Administrative Agent, the applicable Issuing Bank and the Borrower may agree (or, if such day is not a Business Day, the immediately preceding Business Day).

“**Letter of Credit Extension**” means, with respect to any Letter of Credit, the issuance thereof or the extension of the expiry date thereof, or the renewal or increase of the amount thereof.

“**Letter of Credit Obligations**” means, at any time, the aggregate of all liabilities at such time of any Loan Party to each Issuing Bank with respect to Letters of Credit, whether or not any such liability is contingent, including, without duplication, the sum of (a) the Reimbursement Obligations at such time and (b) the maximum aggregate amount which is, or at any time thereafter may become, available for drawing under all Letters of Credit then outstanding.

“**Letter of Credit Percentage**” means, (a) initially with respect to (i) Citibank, Goldman Sachs Bank USA, Bank of America, N.A., Credit Suisse AG, Cayman Islands Branch, UBS AG, Stamford Branch, Wells Fargo Bank, National Association, Capital One, National Association as set forth in **Schedule 2.01(a)** (in each case, as may be reduced to reflect any percentage allocated to another Issuing Bank pursuant to the immediately succeeding **clause (b)**) and (b) from time to time after the Closing Date with respect to any other Issuing Bank, subject to **Section 11.01**, a percentage to be agreed between the Borrower and such Issuing Bank.

“**Letter of Credit Sublimit**” means the greater of (a) \$150,000,000 and (b) such higher amount as the Borrower, the Required Lenders and the applicable Issuing Bank(s) may from time to time agree.

“**Letter of Credit Usage**” means, as of any date of determination, the sum of (a) the maximum aggregate amount which is, or at any time thereafter may become, available for drawing under all Letters of Credit then outstanding and (b) the aggregate amount of all Reimbursement Obligations outstanding at such time.

“**Lien**” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory, deemed or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any Capitalized Lease having substantially the same economic effect as any of the foregoing); **provided** that in no event shall an operating lease in and of itself be deemed a Lien.

“**Lien Release Event**” has the meaning specified in **Section 10.11(a)(i)**.

“**Limited Condition Acquisition**” means any Acquisition Transaction or other Investment by the Borrower or one or more of its Restricted Subsidiaries whose consummation is not conditioned on the availability of, or on obtaining, third party financing.

“**Line Cap**” shall mean the lesser of (a) the aggregate amount of the Commitments at such time and (b) the Borrowing Base then in effect.

“**Liquidity Condition**” has the meaning set forth in the definition of “**Cash Dominion Period**”.

“**Loan**” means any of a Revolving Loan, a Swing Line Loan and a Protective Advance made by a Lender to the Borrower under **Article II** (including **Section 2.16**).

“**Loan Documents**” means, collectively, (a) this Agreement, (b) the Notes, (c) any Refinancing Amendment, Incremental Amendment or Extension Amendment, (d) the Guaranty, (e) the Collateral Documents, (f) the Intercreditor Agreements, and (g) the Global Intercompany Note.

“**Loan Parties**” means, collectively, the Borrower and the Guarantors.

“**L/C Fee**” has the meaning specified in **Section 2.11(b)(ii)**.

“**Maintenance Capital Expenditures**” means, for any period, the portion of the aggregate amount of all Capital Expenditures of the Borrower for such period attributable to maintenance of property, plant or equipment of the Borrower and the Restricted Subsidiaries, as determined in good faith by a Responsible Officer of the Borrower.

“**Management Stockholders**” means (a) any Company Person who is an investor in the Borrower, (b) family members of any of the individuals identified in the foregoing **clause (a)**, (c) trusts, partnerships or limited liability companies for the benefit of any of the individuals identified in the foregoing **clause (a)** or **(b)**, and (d) heirs, executors, estates, successors and legal representatives of the individuals identified in the foregoing **clause (a)** or **(b)**.

“**Margin Stock**” has the meaning set forth in Regulation U of the Board of Governors of the United States Federal Reserve System, or any successor thereto.

“**Market Capitalization**” means an amount equal to (i) the total number of issued and outstanding shares of Equity Interests of the Borrower (or any successor of the Borrower) on the date of the declaration or making of the relevant Restricted Payment multiplied by (ii) the arithmetic mean of the closing prices per share of such Equity Interests for the 30 consecutive trading days immediately preceding the date of declaration or making of such Restricted Payment.

“**Master Agreement**” has the meaning specified in the definition of “**Hedge Agreement**”.

“**Material Adverse Effect**” means any event, circumstance or condition that has had a materially adverse effect on (a) the business, operations, assets, liabilities (actual or contingent) or financial condition of the Borrower and its Restricted Subsidiaries, taken as a whole, and (b) the ability of the Loan Parties (taken as a whole) to perform their respective payment obligations under the Loan Documents.

“**Material Indebtedness**” means, as of any date, Indebtedness for borrowed money on such date of any Loan Party in an aggregate principal amount exceeding the Threshold Amount;

provided that in no event shall any of the following be Material Indebtedness (a) Indebtedness under a Loan Document, (b) obligations in respect of a Qualified Securitization Financing, (c) Capitalized Lease Obligations, (d) Indebtedness held by a Loan Party or any Indebtedness held by an Affiliate of a Loan Party and (e) Indebtedness under Hedge Agreements.

“**Material Subsidiary**” means, as of the Closing Date and thereafter at any date of determination, each of the Borrower’s Domestic Subsidiaries (a) whose total assets at the last day of the most recent Test Period (when taken together with the total assets of the Restricted Subsidiaries of such Domestic Subsidiary at the last day of the most recent Test Period) were equal to or greater than 5.00% of the consolidated total assets of the Borrower and the Restricted Subsidiaries as of the last day of such Test Period, in each case determined in accordance with GAAP or (b) whose revenues for such Test Period (when taken together with the revenues of the Restricted Subsidiaries of such Domestic Subsidiary for such Test Period) were equal to or greater than 5.00% of the consolidated revenues of the Borrower and the Restricted Subsidiaries for such Test Period, in each case determined in accordance with GAAP; *provided* that if, at any time and from time to time after the date which is 30 days after the Closing Date (or such longer period as the Administrative Agent may agree in its sole discretion), Domestic Subsidiaries that are not Guarantors solely because they do not meet the thresholds set forth in **clause (a)** or **(b)** comprise in the aggregate more than (when taken together with the total assets of the Restricted Subsidiaries of such Domestic Subsidiaries at the last day of the most recent Test Period) 10.00% of the total consolidated assets of the Borrower and the Restricted Subsidiaries that are Domestic Subsidiaries as of the end of the most recently ended Test Period or more than (when taken together with the revenues of the Restricted Subsidiaries of such Domestic Subsidiaries for such Test Period) 10.00% of the consolidated revenues of the Borrower and the Restricted Subsidiaries that are Domestic Subsidiaries for such Test Period (or, in each case, on any date when re-designated as an Excluded Subsidiary pursuant to the definition of “**Excluded Subsidiary**”), then the Borrower shall, not later than sixty days after the date by which financial statements for such Test Period were required to be delivered pursuant to this Agreement or on the date of such re-designation, as applicable (or, in each case, such longer period as the Administrative Agent may agree in its reasonable discretion), (i) designate in writing to the Administrative Agent one or more of such Domestic Subsidiaries as “**Material Subsidiaries**” to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of **Section 6.11** with respect to any such Subsidiaries.

“**Materiality Threshold Amount**” means an amount equal to the greater of (A) 5.00% of Closing Date EBITDA and (B) 5.00% of TTM Consolidated Adjusted EBITDA.

“**Maturing Indebtedness Reserve**” means, as of any date of determination, with respect to any installment(s) of principal of Indebtedness described in the definition of “**Inside Maturity Exception**” (as defined in the Term Loan Credit Agreement as in effect on the date hereof) which has a scheduled date of payment or scheduled maturity date that is due to occur less than 91 days after such date, a reserve equal to the outstanding principal amount of such installment(s) that are so due. For the avoidance of doubt, a Maturing Indebtedness Reserve shall not be established with respect to any principal installment of Indebtedness prior to the 91st day preceding the scheduled date of payment or a scheduled maturity date of such installment.

“**Maturity Date**” means:

(a) with respect to the Revolving Loans, the date that is the earlier of (i) five years after the Closing Date and (ii) the date such Revolving Loans are declared due and payable pursuant to **Section 9.02**, and

(b) with respect to any tranche of Extended Revolving Commitments, the earlier of (i) the final maturity date as specified in the applicable Extension Amendment and (ii) the date such tranche of Extended Revolving Commitments are terminated and/or declared due and payable pursuant to **Section 9.02**.

provided, in each case, that if such day is not a Business Day, the applicable Maturity Date shall be the Business Day immediately preceding such day.

“***Maximum Rate***” has the meaning specified in **Section 11.10**.

“***Minimum Collateral Amount***” means, at any time,

(a) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 103% (or if not denominated in Dollars, 110%) of the Fronting Exposure of the Issuing Banks with respect to Letters of Credit issued and outstanding at such time,

(b) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 103% of the Fronting Exposure of the Swing Line Lender with respect to Swing Line Loans outstanding at such time and

(c) otherwise, an amount determined by the Administrative Agent and the Issuing Banks or the Swing Line Lender, as the case may be, in their sole discretion.

“***Moody’s***” means Moody’s Investors Service, Inc. and any successor thereto.

“***MTM***” has the meaning assigned such term in the definition of “***Designated Hedging Reserves***.”

“***Multiemployer Plan***” means any multiemployer plan as defined in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA, to which any Loan Party or any of their respective ERISA Affiliates makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“***Net Income***” means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP (determined, for the avoidance of doubt, on an unconsolidated basis) and before any reduction in respect of preferred stock dividends.

“***Net Orderly Liquidation Value***” means, with respect to Eligible Inventory, the net appraised liquidation value thereof (expressed as a percentage of the Cost of such Inventory) as determined from time to time by an Acceptable Appraiser in accordance with **Section 6.10**.

“***Non-Bank Certificate***” has the meaning specified in **Section 3.01(b)**.

“***Non-Consenting Lender***” has the meaning specified in **Section 3.07**.

“**Non-Defaulting Lender**” means, at any time, each Lender that is not a Defaulting Lender at such time.

“**Non-Hardwired Currencies**” means all Alternative Currencies other than Dollars.

“**Non-Loan Party**” means any Restricted Subsidiary of the Borrower that is not a Loan Party.

“**Nonrenewal Notice Date**” has the meaning specified in **Section 2.04(b)(iii)**.

“**Not Otherwise Applied**” means, with reference to the amount of any Permitted Equity Issuances that is proposed to be applied to a particular use or transaction, that such amount was not previously applied in determining the permissibility of a transaction under the Loan Documents (including, for the avoidance of doubt, any use of such amount to fund a Specified Equity Contribution or to incur Contribution Indebtedness) where such permissibility was (or may have been) contingent on the receipt or availability of such amount, it being agreed that the incurrence of secured debt shall be deemed one use transaction for purposes of this definition.

“**Note**” means each of the Revolving Loan Notes and the Swing Line Note.

“**Notice of Intent to Cure**” has the meaning specified in **Section 6.02(a)**.

“**Obligations**” means all (a) advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit (including in respect of any Revolving Exposure relating thereto), whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees and expenses that accrue after the commencement by or against any Loan Party of any case or proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, fees and expenses are allowed or allowable claims in such case or proceeding, (b) obligations of any Loan Party arising under any Secured Hedge Agreement and (c) Cash Management Obligations; **provided** that “**Obligations**” of any Guarantor shall exclude any Excluded Swap Obligations. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents (and any of their Subsidiaries to the extent they have obligations under the Loan Documents) include the obligation (including guarantee obligations) to pay principal, interest, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party and to provide Cash Collateral under any Loan Document.

“**OFAC**” means the Office of Foreign Assets Control of the U.S. Treasury Department.

“**OID**” means original issue discount.

“**Organization Documents**” means,

(a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction);

(b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and

(c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“**Other Connection Taxes**” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“**Other Taxes**” has the meaning specified in **Section 3.01(f)**.

“**Overadvance**” shall mean a Loan or issuance of a Letter of Credit to the extent that, immediately after the making of such Loan or issuance, the aggregate amount of Credit Extensions then outstanding would exceed the Line Cap.

“**Overnight Rate**” means, for any day, (a) with respect to any amount denominated in Dollars, the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by the Administrative Agent in accordance with bank industry rules on interbank compensation and (b) with respect to any amount denominated in any Alternative Currency, the rate of interest per annum reasonably determined by the Administrative Agent to be its cost of funding such amount.

“**Pari Passu Lien Debt**” means any Indebtedness that is intended by the Borrower to be secured by Liens on all or any portion of the Collateral that are *pari passu* in priority with the Liens on Collateral that secure the Term Loan Obligations. For the avoidance of doubt, “**Pari Passu Lien Debt**” includes the Initial Term Loans as of the Closing Date.

“**Participant**” has the meaning specified in **Section 11.07(d)**.

“**Participant Register**” has the meaning specified in **Section 11.07(e)**.

“**Participating Member State**” means each state as described in any EMU Legislation.

“**Participation**” has the meaning specified in **Section 11.07(d)**.

“**Payment Conditions**” means with respect to any transaction

(a) no Event of Default has occurred and is continuing or would arise after giving effect to such transaction and

(b) either

(i) the Fixed Charge Coverage Ratio would be at least 1.00:1.00 on a Pro Forma Basis and the Borrower would have Excess Availability of at least the greater of (x) \$40,000,000 and (y) 12.5% of the Line Cap (but with respect to Restricted Payments only, \$45,000,000 and 15.0%, respectively) on a Pro Forma Basis immediately after giving effect to such transaction and over the 20 consecutive calendar days immediately prior to such transaction, or

(ii) the Borrower would have Excess Availability on a Pro Forma Basis of at least the greater of (x) \$55,000,000 and (y) 17.5% of the Line Cap (but with respect to Restricted Payments only, \$62,500,000 and 20.0%) on a Pro Forma Basis immediately after giving effect to such transaction and over the 20 consecutive calendar days immediately prior to such transaction.

“**PBGC**” means the Pension Benefit Guaranty Corporation or any successor thereto.

“**Pension Plan**” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA, and is sponsored or maintained by any Loan Party or any of their respective ERISA Affiliates or to which any Loan Party or any of their respective ERISA Affiliates contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made or has had an obligation to make contributions at any time in the preceding five plan years.

“**Periodic Term SOFR Determination Day**” has the meaning specified in the definition of “Term SOFR”.

“**Permitted Acquisition**” means an Acquisition Transaction together with other Investments undertaken to consummate such Acquisition Transaction; *provided* that:

(a) after giving Pro Forma Effect to any such Acquisition Transaction or Investment, at the applicable time determined in accordance with **Section 1.08(f)**, no Event of Default shall have occurred and be continuing;

(b) the business of such Person, or such assets, as the case may be, constitute a business permitted by the Loan Documents; and

(c) with respect to each such purchase or other acquisition, all actions required to be taken with respect to any such newly created or acquired Subsidiary (including each Subsidiary thereof that constitutes a Restricted Subsidiary) or assets in order to satisfy the requirements set forth in **Section 6.11** to the extent applicable shall have been taken (or shall be taken), to the extent required by such section (or arrangements for the taking of such actions after the consummation of the Permitted Acquisition shall have been made) (unless such newly created or acquired Subsidiary constitutes an Excluded Subsidiary or is designated as an Unrestricted Subsidiary).

“**Permitted Discretion**” means reasonable credit judgment in accordance with customary business practices for comparable asset-based lending transactions; *provided* that, as it relates to the establishment of new categories of Reserves after the Closing Date (other than Reserves that are expressly included in the definition of “**Reserves**” or the adjustment or imposition of

exclusionary criteria in the definition of “*Eligible Account*”, “*Eligible Inventory*” and “*Qualified Cash*”), Permitted Discretion will require that

(a) such establishment, adjustment or imposition of Reserves after the Closing Date be based on the analysis of facts or events first occurring or first discovered by the Administrative Agent after the Closing Date or that are materially different from facts or events known to the Administrative Agent on the Closing Date; *provided*, this **clause (a)** shall not apply to the Administrative Agent’s establishment of a Royalty Reserve in respect of any Royalties in existence on the Closing Date,

(b) the amount of any such Reserve so established or the effect of any adjustment or imposition of exclusionary criteria in the definition of each of “*Eligible Account*”, “*Eligible Inventory*” and “*Qualified Cash*” be a reasonable quantification of changes in the ability of the Administrative Agent to realize upon the ABL Priority Collateral included in the Borrowing Base and

(c) no Reserves or changes to eligibility criteria will be duplicative of Reserves or changes already accounted for through eligibility criteria in the definition of “*Eligible Account*”, “*Eligible Inventory*” or “*Qualified Cash*”, as applicable.

“*Permitted Equity Issuance*” means any,

(a) public or private sale or issuance of any Qualified Equity Interests of the Borrower (other than a Specified Equity Contribution);

(b) contribution to the equity capital of the Borrower or any other Loan Party (other than (i) a Specified Equity Contribution or (ii) in exchange for Disqualified Equity Interests); or

(c) sale or issuance of Indebtedness of the Borrower or a Restricted Subsidiary (other than intercompany Indebtedness) that have been converted into or exchanged for Qualified Equity Interests of the Borrower or a Restricted Subsidiary;

provided that the amount of any Permitted Equity Issuance will be the amount of cash and Cash Equivalents received by a Loan Party or Restricted Subsidiary in connection with such sale, issuances or contribution, and the fair market value of any other property received in connection with such sale, issuance or contribution, (measured at the time made), without adjustment for subsequent changes in the value.

“*Permitted Holders*” means:

(a) the Sponsors;

(b) the Management Stockholders; and

(c) any group (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) of which the Persons described in **clauses (a)** or **(b)** above are members; *provided* that, without giving effect to the existence of such group or any other group, the Persons described in **clauses (a)** and **(b)** above, collectively, beneficially own (as defined in Rules 13(d) and 14(d) of the

Exchange Act) Equity Interests representing at least a majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interest of the Borrower then held by such group.

“**Permitted Inventory Locations**” means each location listed on **Schedule 2.01(b)**, and from time to time each other location within the United States which the Borrower has notified the Administrative Agent is a location at which Inventory of a Borrowing Base Party is maintained.

“**Permitted Investment**” means (a) any Permitted Acquisition, (b) any Acquisition Transaction and/or (c) any other Investment or acquisition permitted hereunder.

“**Permitted Investors**” means (a) a Sponsor, (b) each of the Affiliates and investment managers of a Sponsor, (c) any fund or account managed by any of the persons described in **clause (a)** or **(b)** of this definition, (d) any employee benefit plan of the Borrower or any of its subsidiaries and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan, and (e) investment vehicles of members of management of the Borrower and its Subsidiaries.

“**Permitted Junior Secured Refinancing Debt**” means any Credit Agreement Refinancing Indebtedness that is Junior Lien Debt.

“**Permitted Lien**” means any Lien not prohibited by **Section 7.01**.

“**Permitted Pari Passu Secured Refinancing Debt**” means any Credit Agreement Refinancing Indebtedness that is Pari Passu Lien Debt.

“**Permitted Ratio Debt**” means Indebtedness; **provided** that, at the time of incurrence thereof:

(a) immediately after giving effect to the issuance, incurrence, or assumption of such Indebtedness:

(i) in the case of any Pari Passu Lien Debt, the First Lien Net Leverage Ratio for the applicable Test Period is equal to or less than (A) the Closing Date First Lien Net Leverage Ratio or (B) with respect to Indebtedness that is incurred in connection with a Permitted Investment, the First Lien Net Leverage Ratio immediately prior to such incurrence;

(ii) in the case of any Junior Lien Debt, the Secured Net Leverage Ratio for the applicable Test Period is equal to or less than (A) the Closing Date Secured Net Leverage Ratio or (B) with respect to Indebtedness that is incurred in connection with a Permitted Investment, the Secured Net Leverage Ratio immediately prior to such incurrence; and

(iii) in the case of any Indebtedness that is not secured by a Lien on any Collateral, either:

(A) the Total Net Leverage Ratio for the applicable Test Period is equal to or less than (y) the Closing Date Total Net Leverage Ratio or (y) with respect to

Indebtedness that is incurred in connection with a Permitted Investment, the Total Net Leverage Ratio immediately prior to such incurrence, or

(B) the Interest Coverage Ratio for the applicable Test Period is equal to or greater than (x) 2.00 to 1.00 or (y) with respect to Indebtedness that is incurred in connection with a Permitted Investment, the Interest Coverage Ratio immediately prior to such incurrence;

in each case, after giving Pro Forma Effect to the incurrence of such Indebtedness and any use of proceeds thereof and measured as of and for the Test Period immediately preceding the issuance, incurrence or assumption of such Indebtedness for which internal financial statements are available; *provided*, that the aggregate principal amount of Permitted Ratio Debt incurred by Non-Loan Parties, together with the aggregate principal amount of Incremental Equivalent Debt incurred by Non-Loan Parties, shall not exceed, in the aggregate, the greater of (I) 50.00% of Closing Date EBITDA and (II) 50.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination;

(b) to the extent such Permitted Ratio Debt is required to be subject to the provisions of the Closing Date ABL Intercreditor Agreement, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to, or is otherwise subject to the provisions of the Closing Date ABL Intercreditor Agreement or any other intercreditor agreement that may be executed from time to time and reasonably acceptable to the Administrative Agent;

(c) if such Indebtedness is intended to be Pari Passu Lien Debt or Junior Lien Debt, a Debt Representative acting on behalf of the holders of such Permitted Ratio Debt has become party to, or is otherwise subject to intercreditor arrangements set forth in the penultimate paragraph of **Section 7.01**; and

(d) Permitted Ratio Debt (i) that is Pari Passu Lien Debt shall not mature prior to the latest maturity date of, and shall not have a Weighted Life to Maturity shorter than the remaining Weighted Average Life to Maturity of, the Initial Term Loans (without giving effect to any amortization payments or prepayments on the Initial Term Loans actually made) or (ii) that is Junior Lien Debt or unsecured Indebtedness shall not mature, or have scheduled amortization, prior to the latest maturity date of the Initial Term Loans; *provided* that this **clause (d)** shall not apply to the incurrence of any such Indebtedness pursuant to the Inside Maturity Exception (as defined in the Term Loan Credit Agreement as in effect on the date hereof).

Permitted Ratio Debt will be deemed to include any Registered Equivalent Notes issued in exchange therefor.

“Permitted Refinancing” means, with respect to any Person, any modification, refinancing, refunding, replacement, renewal or extension of any Indebtedness of such Person; *provided* that

(a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, replaced, renewed or extended except by an amount equal to unpaid accrued interest and premium (including tender premiums) thereon, *plus* OID and upfront fees *plus* other fees and

expenses reasonably incurred, in connection with such modification, refinancing, refunding, replacement, renewal or extension and by an amount equal to any existing commitments unutilized thereunder,

(b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to **Section 7.03(c)** or **Section 7.03(d)**, such modification, refinancing, refunding, replacement, renewal or extension has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the remaining Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, replaced, renewed or extended,

(c) such Indebtedness shall not be incurred or guaranteed by any Loan Party or Restricted Subsidiary other than a Loan Party or Restricted Subsidiary that was an obligor of the Indebtedness being exchanged, extended, renewed, replaced or refinanced and no additional Loan Parties or Restricted Subsidiaries shall become liable for such Indebtedness;

(d) if such Indebtedness being modified, refinanced, refunded, replaced, renewed, or extended is Junior Financing or Junior Lien Debt,

(i) to the extent such Indebtedness being modified, refinanced, refunded, replaced, renewed, or extended is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, replacement, renewal, or extension is subordinated in right of payment to the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, replaced, renewed or extended,

(ii) to the extent such Indebtedness being modified, refinanced, refunded, replaced, renewed, or extended is unsecured, such modification, refinancing, refunding, replacement, renewal or extension is either (A) unsecured or (B) secured only by Permitted Liens (*provided* that such incurrence will thereafter count in the calculation of any remaining basket capacity thereunder, while such Indebtedness remains outstanding); and

(iii) to the extent such Indebtedness being modified, refinanced, refunded, replaced, renewed, or extended is secured by Liens, (A) such modification, refinancing, refunding, replacement, renewal or extension is either (1) unsecured or (2) secured only by Permitted Liens, *provided* that if such Indebtedness is Pari Passu Lien Debt or Junior Lien Debt, (x) to the extent such Indebtedness being modified, refinanced, refunded, replaced, renewed, or extended is required to be subject to the provisions of the Closing Date ABL Intercreditor Agreement, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to, or is otherwise subject to the provisions of the Closing Date ABL Intercreditor Agreement or any other intercreditor agreement that may be executed from time to time and reasonably acceptable to the Administrative Agent and (y) (y) such Indebtedness shall not be secured on a pari passu basis by the ABL Priority Collateral and (B) to the extent that such Liens are subordinated to the Liens securing the Obligations, such modification, refinancing, refunding, replacement, renewal or extension is secured by Liens that are subordinated to the Liens securing the Obligations on terms at least as favorable to the Lenders as those contained in the documentation (including any

intercreditor or similar agreements) governing the Indebtedness being modified, refinanced, replaced, refunded, replaced, renewed or extended;

(e) if such Indebtedness is secured by assets of the Borrower or any Restricted Subsidiary:

(i) such Indebtedness shall not be secured by Liens on any assets of the Borrower or any Restricted Subsidiary that are not also subject to, or would be required to be subject to pursuant to the Loan Documents, a Lien securing the Obligations (except (1) Liens on property or assets applicable only to periods after the Latest Maturity Date at the time of incurrence, (2) any Liens on property or assets to the extent that a Lien on such property or asset is also added for the benefit of the Lenders, and (3) any Liens on property or assets under the Indebtedness being exchanged, extended, renewed, replaced or refinanced and (4) with respect to Indebtedness of Non-Loan Parties, Liens on assets of any Non-Loan Party); and

(ii) if such Indebtedness is Pari Passu Lien Debt or Junior Lien Debt, (x) a Debt Representative acting on behalf of the holders of such Indebtedness has become party to, or is otherwise subject to the provisions of the Closing Date ABL Intercreditor Agreement or any other intercreditor agreement that may be executed from time to time and reasonably acceptable to the Administrative Agent and (y) such Indebtedness shall not be secured on a pari passu basis by the ABL Priority Collateral.

Permitted Refinancing will be deemed to include any Registered Equivalent Notes issued in exchange therefor.

“**Permitted Reorganization**” means any transaction (a) undertaken to effect a corporate reorganization (or similar transaction or event) for operational or efficiency purposes or (b) related to tax planning or tax reorganization, in each case, as determined in good faith by the Borrower and entered into after the Closing Date; **provided** that, (i) no Event of Default is continuing immediately prior to such transaction and immediately after giving effect thereto and (ii) after giving effect to such transactions, the security interests of the Lenders in the Collateral (taken as a whole) and the Guarantees of the Obligations (taken as a whole), in each case, would not be materially impaired as a result thereof, and such transaction will not materially adversely affect the Borrower’s ability to make anticipated payments with respect to the Obligations as and when they become due (as determined in good faith by the Borrower).

“**Person**” means any natural person, corporation, limited liability company, unlimited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“**Petco Animal Supplies**” has the meaning specified in the Recitals.

“**Plan**” means any material “employee benefit plan” (as such term is defined in Section 3(3) of ERISA), other than a Foreign Plan, established or maintained by any Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any of their respective ERISA Affiliates.

“**Platform**” has the meaning specified in **Section 6.02**.

“**Pledged Debt**” has the meaning specified in the Security Agreement.

“**Pledged Equity**” has the meaning specified in the Security Agreement.

“**Post-Acquisition Accounts Borrowing Base**” has the meaning specified in the definition of “**Eligible Account**.”

“**Pre-Acquisition Accounts Borrowing Base**” has the meaning specified in the definition of “**Eligible Account**.”

“**Post-Acquisition Inventory Borrowing Base**” has the meaning specified in the definition of “**Eligible Inventory**.”

“**Pre-Acquisition Inventory Borrowing Base**” has the meaning specified in the definition of “**Eligible Inventory**.”

“**Prepayment Notice**” means a written notice made pursuant to **Section 2.07(a)(i)** substantially in the form of **Exhibit J**.

“**Private-Side Information**” means any information with respect to the Borrower and its Subsidiaries that is not Public-Side Information.

“**Pro Forma Basis**” and “**Pro Forma Effect**” mean, with respect to compliance with any test or covenant or calculation hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Specified Transactions) in accordance with **Section 1.08**.

“**Pro Rata Share**” means with respect to all payments, computations and other matters relating to the Revolving Commitment or Revolving Loans of any Lender and any Letters of Credit issued or participations purchased therein by any Lender or any participation in any Swing Line Loans purchased by any Lender at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Revolving Exposure of that Lender at such time and the denominator of which is the aggregate Revolving Exposure of all Lenders at such time.

“**Protective Advance**” has the meaning specified in **Section 2.02(a)**.

“**PTE**” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“**Public Lenders**” means Lenders that do not wish to receive Private-Side Information.

“**Public-Side Information**” means information that does not constitute material non-public information (within the meaning of United States federal, state or other applicable securities laws) with respect to the Borrower or any of its Subsidiaries or any of their respective securities.

“**QFC**” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

“**QFC Credit Support**” has the meaning specified in **Section 11.26(a)**.

“**Qualified Cash**” means cash and Cash Equivalents of the Loan Parties in DDAs (including any DDA maintained with the Administrative Agent) that are subject to Blocked Account Agreements; **provided** that the Administrative Agent shall be entitled, pursuant to the terms thereof, to reasonably request cash reporting (i) on a daily basis with respect to any such accounts, (ii) with the delivery of a Borrowing Base Certificate, (iii) upon any request for a credit extension and (iv) in connection with any action incurred in reliance on the Payment Conditions.

“**Qualified Equity Interests**” means any Equity Interests that are not Disqualified Equity Interests.

“**Qualified Professional Asset Manager**” has the meaning specified in **Section 10.16(a)**.

“**Qualified Securitization Financing**” means any Securitization Financing of a Securitization Subsidiary that meets the following conditions:

- (a) such Qualified Securitization Financing (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Borrower and the Securitization Subsidiary, as determined by the Borrower in good faith;
- (b) all sales, transfers and/or contributions of Securitization Assets and related assets to the Securitization Subsidiary are made at fair market value; and
- (c) the financing terms, covenants, termination events and other provisions thereof, including any Standard Securitization Undertakings, shall be market terms, as determined by the Borrower in good faith; and
- (d) the aggregate principal amount of all Securitization Financings that may be Qualified Securitization Financings shall not exceed \$75,000,000 at any time.

“**Recipient**” means (a) the Administrative Agent, (b) any Lender and (c) any Issuing Bank, as applicable.

“**Refunded Swing Line Loans**” has the meaning specified in **Section 2.03(c)(i)**.

“**Refunding Equity Interests**” has the meaning specified in **Section 7.06 (o)**.

“**Register**” has the meaning specified in **Section 11.07(c)**.

“**Registered Equivalent Notes**” means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act, substantially identical notes (having the same Guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

“**Reimbursement Obligations**” has the meaning specified in Section 2.04(c)(i).

“**Related Indemnified Person**” of an Indemnitee means (a) any controlling person or controlled affiliate of such Indemnitee, (b) the respective directors, officers, or employees of such Indemnitee or any of its controlling persons or controlled affiliates and (c) the respective agents of such Indemnitee or any of its controlling persons or controlled affiliates, in the case of this **clause (c)**, acting at the instructions of such Indemnitee, controlling person or such controlled affiliate; *provided* that each reference to a controlled affiliate or controlling person in this definition shall pertain to a controlled affiliate or controlling person involved in the negotiation or syndication of the Facility.

“**Release Actions**” has the meaning specified in Section 10.11(b).

“**Release Certificate**” has the meaning specified in Section 10.11(b).

“**Release Date**” has the meaning specified in Section 10.11 (c).

“**Release/Subordination Event**” has the meaning specified in Section 10.11(a)(i)(G).

“**Relevant Four Fiscal Quarter Period**” means, with respect to any requested Specified Equity Contribution, the four-fiscal quarter period ending on (and including) the fiscal quarter in which Consolidated Adjusted EBITDA will be increased as a result of such Specified Equity Contribution.

“**Relevant Governmental Body**” means

(a) with respect to a Benchmark or Benchmark Replacement in respect of any Benchmark applicable to Dollars, the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto, and

(b) with respect to a Benchmark Replacement for any Benchmark applicable to a currency other than Dollars,

(i) the central bank for the applicable currency or any central bank or other supervisor which is responsible for supervising (A) such Benchmark or Benchmark Replacement for such currency or (B) the administrator of such Benchmark or Benchmark Replacement for such currency or

(ii) any working group or committee officially endorsed or convened by: (A) the central bank for such currency, (B) any central bank or other supervisor that is responsible for supervising either (x) such Benchmark or Benchmark Replacement for such currency or (y) the administrator of such Benchmark or Benchmark Replacement for such currency, or (C) the Financial Stability Board, or a committee officially endorsed or convened by the Financial Stability Board, or any successor thereto.

“**Report**” means reports prepared by the Administrative Agent or another Person showing the results of appraisals, field examinations or audits pertaining to the Loan Parties’ assets from information furnished by or on behalf of the Loan Parties, after the Administrative Agent has exercised its rights of inspection pursuant to **Section 6.10(b)**, which Reports shall be distributed to the Lenders by the Administrative Agent, subject to the provisions of **Section 11.08**.

“**Reportable Event**” means, with respect to any Pension Plan, any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the thirty day notice period has been waived.

“**Required Facility Lenders**” means, with respect to any Facility on any date of determination, Lenders having or holding more than 50.00% of the sum of (a) the aggregate principal amount of outstanding Loans under such Facility and (b) the aggregate unused Commitments under such Facility; **provided** that the portion of outstanding Loans and the unused Commitments of such Facility, as applicable, held or deemed held by a Defaulting Lender shall be excluded for purposes of making a determination of Required Facility Lenders.

“**Required Lenders**” means, as of any date of determination, Lenders having or holding more than 50% of the sum of the aggregate Revolving Exposure of all Lenders; **provided** that the aggregate Revolving Exposure of or held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“**Required Minimum Balances**” has the meaning specified in **Section 6.18(c)**.

“**Resolution Authority**” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“**Reserved Secured Cash Management Obligations**” means any Obligations in respect of any Secured Cash Management Services, up to the maximum amount owing thereunder as specified by the applicable Cash Management Bank in writing to Administrative Agent, which amount may be increased with respect to any existing Secured Cash Management Services by further written notice from such Cash Management Bank to Administrative Agent from time to time; **provided** that in each case (a) establishment of Bank Products Reserves for such amount and all other Reserved Secured Hedge Obligations and Reserved Secured Cash Management Obligations would not result in an Overadvance and (b) the Borrower has been notified of and given a least three Business Days to review any error in the calculation of such maximum amount and increased amount.

“**Reserved Secured Hedge Obligations**” means any Obligations in respect of any Hedge Agreement owing to a Hedge Bank, up to the maximum amount owing thereunder as specified by the applicable Hedge Bank in writing to Administrative Agent, which amount may be increased with respect to any existing Secured Hedge Agreement at any time by further written notice from such Hedge Bank to Administrative Agent; **provided** that the Borrower has been notified of and given a least three Business Days to review any error in the calculation of such maximum amount and increased amount.

“**Reserves**” means the Ad Valorem Tax Reserves, Charitable Reserves, Customer Credit Liability Reserves, Customer Deposits Reserves, Designated Cash Management Reserves,

Designated Hedging Reserves, Maturity Indebtedness Reserve, Shrink Reserves, Landlord Lien Reserves, reserves against Eligible Accounts, Eligible Inventory and Qualified Cash and any and all other reserves established in accordance with and subject to **Section 2.22** that reflect risks or contingencies that are reasonably likely to

- (a) (i) affect the collectability of Eligible Accounts and (ii) otherwise realize upon the Collateral included in the Borrowing Base in accordance with the Loan Documents;
- (b) (i) impair the value of the Eligible Accounts, Eligible Inventory or Qualified Cash or the Collateral Agent's Lien thereon or
 - (ii) adversely affect any component of the Borrowing Base, the Collateral included therein or the validity or enforceability of the Loan Documents or any material remedies of the Administrative Agent, the Collateral Agent, each Issuing Bank and each Lender under the Loan Documents with respect to such Collateral, or
- (c) result in the payment of unanticipated liabilities of any Loan Party.

Without limiting the generality of the foregoing but subject to **Section 2.22**, the Administrative Agent may establish dilution reserves, reserves for unpaid and accrued sales taxes, reserves for banker's liens, rights of setoff or similar rights and remedies as to deposit or investment accounts, reserves for contingent liabilities of any Loan Party, reserves for uninsured or underinsured losses or litigation of any Loan Party, reserves for customs charges, reserves for fees, assessments, and other governmental charges with respect to the Eligible Accounts, reserves for self-insurance and insurance premiums and reserves for other claims and liabilities that will need to be satisfied, or will dilute the amounts received by holders of Loans, in connection with the realization upon such Collateral.

“Responsible Officer” means the executive chairman, chief executive officer, president, senior vice president, senior vice president (finance), vice president, chief financial officer, chief operating officer, treasurer, manager of treasury activities or assistant treasurer, secretary, assistant secretary or other similar officer or Person performing similar functions of a Loan Party and, solely for purposes of notices given pursuant to **Article II**, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. Unless otherwise specified, all references herein to a **“Responsible Officer”** shall refer to a Responsible Officer of the Borrower.

“Restricted” means, when referring to cash or Cash Equivalents of the Borrower or any of the Restricted Subsidiaries, that such cash or Cash Equivalents appear (or would be required to appear) as “restricted” on a consolidated balance sheet of the Borrower or such Restricted Subsidiary (unless such appearance is related to a restriction in favor of the Administrative Agent or the Collateral Agent or any other Lender).

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of the Borrower or any of the Restricted Subsidiaries (in each case, solely to a holder of Equity Interests in such Person’s capacity as a holder of such Equity Interests other than dividends or distributions payable solely in Equity Interests (other than Disqualified Equity Interests) of the Borrower), or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest, or on account of any return of capital to the Borrower’s stockholders, partners or members (or the equivalent Persons thereof). For the avoidance of doubt, the payment of any Contractual Obligation that is based on, or measured with respect to the value of an Equity Interest, including any such Contractual Obligations constituting compensation arrangements, shall not be considered a Restricted Payment. The amount of any Restricted Payment not made in cash or Cash Equivalents shall be the fair market value of the securities or other property distributed by dividend or other otherwise.

“Restricted Subsidiary” means any Subsidiary of the Borrower other than an Unrestricted Subsidiary.

“Revolving Commitment” means the commitment of a Lender to make or otherwise fund any Revolving Loan and to acquire participations in Letters of Credit and Swing Line Loans hereunder and **“Revolving Commitments”** means such commitments of all Lenders in the aggregate. The amount of each Lender’s Revolving Commitment, if any, is set forth on **Schedule 2.01** under the caption **“Revolving Commitment”** or in the applicable Assignment and Assumption, subject to any increase, adjustment or reduction pursuant to the terms and conditions hereof including **Section 2.16**. The aggregate amount of the Revolving Commitments as of the Closing Date is \$500,000,000.

“Revolving Commitment Period” means the period from the Closing Date to but excluding the Revolving Commitment Termination Date.

“Revolving Commitment Termination Date” means the earliest to occur of (a) the fifth anniversary of the Closing Date, (b) the date the Revolving Commitments, including Revolving Commitments in respect of Letters of Credit and Swing Line Loans, are permanently reduced to zero pursuant to **Section 2.08**, and (c) the date of the termination of the Revolving Commitments pursuant to **Section 9.02**.

“Revolving Exposure” means, with respect to any Lender as of any date of determination, (a) prior to the termination of the Revolving Commitments, that Lender’s Revolving Commitment; and (b) after the termination of the Revolving Commitments, the sum of (i) the aggregate outstanding principal amount of the Revolving Loans of that Lender, (ii) in the case of each Issuing Bank, the aggregate Letter of Credit Usage in respect of all Letters of Credit issued by that Lender (net of any participations by Lenders in such Letters of Credit), (iii) the aggregate amount of all participations by that Lender in any outstanding Letters of Credit or any unreimbursed drawing under any Letter of Credit, (iv) in the case of the Swing Line Lender, the aggregate outstanding principal amount of all Swing Line Loans (net of any participations therein by other Lenders) and (v) the aggregate amount of all participations therein by that Lender in any outstanding Swing Line Loans.

“**Revolving Facility**” means the Facility comprised of the Revolving Commitments, Revolving Loans, Swing Line Loans and Letters of Credit hereunder.

“**Revolving Lender**” means a Lender having a Revolving Commitment or other Revolving Exposure.

“**Revolving Loan Note**” means a promissory note in the form of **Exhibit B-1**, as it may be amended, restated, supplemented or otherwise modified from time to time.

“**Revolving Loans**” has the meaning specified in **Section 2.01(a)**.

“**Royalties**” means all royalties, fees, expense reimbursement and other amounts payable by any Borrowing Base Party under a license of Intellectual Property.

“**Royalty Reserve**” means an amount equal to all accrued Royalties that are then unpaid, whether or not then due and payable by any Borrowing Base Party.

“**S&P**” means Standard & Poor’s, a division of S&P Global Inc., and any successor thereto.

“**Sale Leaseback Transaction**” means a sale leaseback transaction with respect to all or any portion of any real property, equipment or capital assets owned by a Loan Party or other property customarily included in such transactions.

“**Same Day Funds**” means disbursements and payments in immediately available funds.

“**Sanctions**” means any sanction administered or enforced by the United States government (including OFAC), the United Nations Security Council, the European Union or HMT.

“**SEC**” means the Securities and Exchange Commission, or any Governmental Authority succeeding to, or exercising jurisdiction outside of the United States, any of its principal functions.

“**Secured Cash Management Services**” means any Cash Management Services entered into by and among the Borrower or any Restricted Subsidiary and any Cash Management Bank.

“**Secured Hedge Agreement**” means any Hedge Agreement that is entered into by and between any Loan Party and any Hedge Bank and designated in writing by the Hedge Bank and the Borrower to the Administrative Agent as a “**Secured Hedge Agreement**” (but only if such Hedge Agreement has not been designated as a “**Secured Hedge Agreement**” under the Term Loan Credit Agreement).

“**Secured Net Leverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated Secured Net Debt outstanding as of the last day of such Test Period to (b) Consolidated Adjusted EBITDA of the Borrower for such Test Period.

“**Secured Obligations**” has the meaning given to such term in the Security Agreement.

“**Secured Parties**” means, collectively, the Administrative Agent, the Collateral Agent, the Lenders, each Issuing Bank, each Hedge Bank party to a Secured Hedge Agreement, each Cash

Management Bank party to an agreement governing Cash Management Obligations, the Supplemental Administrative Agent and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 10.05 and Section 10.12.

“**Securities Act**” means the U.S. Securities Act of 1933, as amended.

“**Securitization Assets**” means the accounts receivable, royalty or other revenue streams, other rights to payment (including with respect to rights of payment pursuant to the terms of Joint Ventures) subject to a Qualified Securitization Financing and the proceeds thereof.

“**Securitization Fees**” means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees paid to a Person that is not a Securitization Subsidiary in connection with any Qualified Securitization Financing.

“**Securitization Financing**” means any transaction or series of transactions that may be entered into by the Borrower or any of its Subsidiaries pursuant to which the Borrower or any of its Subsidiaries may sell, convey or otherwise transfer to (a) a Securitization Subsidiary (in the case of a transfer by the Borrower or any of its Subsidiaries) or (b) any other Person (in the case of a transfer by a Securitization Subsidiary), or may grant a security interest or Lien in or on, any Securitization Assets of the Borrower or any of its Subsidiaries, and any assets related thereto, including all collateral securing such Securitization Assets, all contracts and all guarantees or other obligations in respect of such Securitization Assets, proceeds of such Securitization Assets and other assets that are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving Securitization Assets as determined by the Borrower in good faith.

“**Securitization Repurchase Obligation**” means any obligation of a seller or transferor of Securitization Assets in a Qualified Securitization Financing to repurchase Securitization Assets arising as a result of a breach of a Standard Securitization Undertaking, including as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, offset or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

“**Securitization Subsidiary**” means a wholly owned Subsidiary of the Borrower (or another Person formed for the purposes of engaging in a Qualified Securitization Financing in which the Borrower or any Subsidiary of the Borrower makes an Investment and to which the Borrower or any Subsidiary of the Borrower transfers Securitization Assets and related assets) that engages in no activities other than in connection with the financing of Securitization Assets of the Borrower or its Subsidiaries, all proceeds thereof and all rights (contingent and other), collateral and other assets relating thereto, and any business or activities incidental or related to such business, and which is designated by the Board of Directors of the Borrower or such other Person (as provided below) as a Securitization Subsidiary, and

(a) no portion of the Indebtedness or any other obligation (contingent or otherwise) of which (i) is guaranteed by the Borrower or any Subsidiary of the Borrower, other than another Securitization Subsidiary (excluding guarantees of obligations (other than the principal of, and

interest on, Indebtedness) pursuant to Standard Securitization Undertakings), (ii) is recourse to or obligates the Borrower or any Subsidiary of the Borrower, other than another Securitization Subsidiary, in any way other than pursuant to Standard Securitization Undertakings or (iii) subjects any property or asset of the Borrower or any Subsidiary of the Borrower, other than another Securitization Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings;

(b) with which none of the Borrower or any Subsidiary of the Borrower, other than another Securitization Subsidiary, has any material contract, agreement, arrangement or understanding other than on terms which the Borrower reasonably believes to be no less favorable to the Borrower or such Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Borrower; and

(c) to which none of the Borrower or any Subsidiary of the Borrower, other than another Securitization Subsidiary, has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results;

it being agreed that a Securitization Asset consisting of an obligation of or to any Affiliate of a Loan Party (other than another Loan Party or Restricted Subsidiary, unless otherwise permitted by **Section 7.05**) shall not result non-compliance with any of the foregoing provisions.

“Security Agreement” means, collectively, the Security Agreement executed by the Loan Parties, substantially in the form of **Exhibit F**, together with each Security Agreement Supplement executed and delivered pursuant to **Section 6.11**.

“Security Agreement Supplement” has the meaning specified in the Security Agreement.

“Shrink” means Inventory that is lost, misplaced, or stolen.

“Shrink Reserve” means an amount reasonably estimated by the Administrative Agent to be equal to that amount which is required in order that the Shrink reflected in current stock ledger of the Borrowing Base Parties would be reasonably equivalent to the Shrink calculated as part of the Borrower's most recent physical inventory (it being understood and agreed that no Shrink Reserve established by the Administrative Agent shall be duplicative of any Shrink as so reflected in the current stock ledger of the Borrowing Base Parties or estimated by the Borrower for purposes of computing the Borrowing Base other than at month's end).

“Short Term Advances” has the meaning specified in the definition of **“Indebtedness.”**

“Similar Business” means any business, the majority of whose revenues are derived from (i) business or activities conducted by the Borrower and its Restricted Subsidiaries on the Closing Date, (ii) any business that is a natural outgrowth or reasonable extension, development or expansion of any such business or any business similar, reasonably related, incidental, complementary or ancillary to any of the foregoing or (iii) any business that in the Borrower's good faith business judgment constitutes a reasonable diversification of businesses conducted by the Borrower and its Restricted Subsidiaries.

“**SOFR**” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“**SOFR Administrator**” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“**Solvent**” and “**Solvency**” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the assets of such Person, on a consolidated basis with its Subsidiaries, exceeds its debts and liabilities, subordinated, contingent or otherwise, on a consolidated basis, (b) the present fair saleable value of the property of such Person, on a consolidated basis with its Subsidiaries, is greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, on a consolidated basis, as such debts and other liabilities become absolute and matured, (c) such Person, on a consolidated basis with its Subsidiaries, is able to pay its debts and liabilities, subordinated, contingent or otherwise, on a consolidated basis, as such liabilities become absolute and matured and (d) such Person, on a consolidated basis with its Subsidiaries, is not engaged in, and is not about to engage in, business for which it has unreasonably small capital. The amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

“**SPC**” has the meaning specified in **Section 11.07(g)**.

“**Specified ABL Event of Default**” means an Event of Default pursuant to **Section 9.01(a)**, **Section 9.01(b)(i)(A)**, **Section 9.01(b)(ii)**, **Section 9.01(b)(iii)**, **Section 9.01(d)** (solely with respect to the representation and warranty made in **Section 5.20**) and **Section 9.01(f)**.

“**Specified DDA**” means any DDA maintained with a Lender.

“**Specified Equity Contribution**” has the meaning specified in **Section 8.02**.

“**Specified Event of Default**” means an Event of Default pursuant to **Section 9.01(a)** or an Event of Default pursuant to **Section 9.01(f)** with respect to the Borrower.

“**Specified Excess Availability**” means the sum of (a) Excess Availability at such time *plus* (b) Suppressed Availability (which shall not be less than zero) at such time; *provided* that Suppressed Availability shall not exceed 2.5% of the Aggregate Commitments at any time.

“**Specified Representations**” means those representations and warranties made by the Borrower in **Sections 5.01(a)** (with respect to organizational existence only), **5.01(b)(ii)**, **5.02(a)**, **5.02(b)(i)**, **5.04**, **5.13**, **5.16**, **5.17** and **5.18**.

“**Specified Transaction**” means any of the following identified by the Borrower as a “**Specified Transaction**” in the Borrower’s sole discretion: (a) transaction or series of related transactions, including Investments and Acquisition Transactions, that results in a Person becoming a Restricted Subsidiary, (b) any designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary, (c) any transaction or series of related transactions, including Dispositions, that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Borrower, (d) any acquisition or disposition of assets constituting a business unit, line of business or division of

another Person or a facility, (e) any material acquisition or disposition, (f) any restructuring of the business of the Borrower, whether by merger, consolidation, amalgamation or otherwise, (g) any incurrence or repayment of Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes), (h) any Restricted Payment and (i) transactions of the type given pro forma effect in any quality of earnings report prepared by a nationally recognized accounting firm and furnished to the Administrative Agent in connection with the Transactions or an Acquisition Transaction or other Investment consummated after the Closing Date.

“**Specified Transaction Adjustments**” has the meaning specified in **Section 1.08(c)**.

“**Sponsor**” means,

(a) (x) any funds, limited partnerships or co-investment vehicles managed or advised by CVC, (y) Canada Pension Plan Investment Board (or any funds, limited partnerships or co-investment vehicles managed or advised by Canada Pension Plan Investment Board) or any Affiliates of any of the foregoing Person(s) or (z) any direct or indirect Subsidiaries of any of the foregoing Person(s) (or jointly managed by any such Person(s) or over which any such Person(s) exercise governance rights) and

(b) any investors (including limited partners) in the Persons identified in **clause (a)** who are investors (including limited partners) in such Persons as of the Closing Date, and from time to time, invest directly or indirectly in the Borrower (but, in each case, excluding any portfolio companies of any of the foregoing).

“**Standard Securitization Undertakings**” means representations, warranties, covenants and indemnities entered into by the Borrower or any Subsidiary of the Borrower that are customary in a Securitization Financing.

“**Stated Amount**” means, with respect to any Letter of Credit at any time, the aggregate amount available to be drawn thereunder at such time (regardless of whether any conditions for drawing could then be met).

“**Subsidiary**” means, with respect to any Person, any corporation, partnership, limited liability company, unlimited liability company or other entity of which (a) the Equity Interests having ordinary voting power (other than Equity Interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors of such corporation, partnership, limited liability company, unlimited liability company or other entity are at the time owned by such Person or (b) more than 50.00% of the Equity Interests are at the time owned by such Person. Unless otherwise indicated in this Agreement, all references to Subsidiaries will mean Subsidiaries of the Borrower. No Person shall be considered a Subsidiary of the Borrower unless the Borrower has the ability to Control such Subsidiary.

“**Subsidiary Guarantor**” or “**Subsidiary Loan Party**” means any Subsidiary (other than an Excluded Subsidiary) that is required to be a Guarantor pursuant to the terms of the Loan Documents.

“**Successor Borrower**” has the meaning specified in **Section 7.04(e)**.

“**Super Majority Lenders**” means, as of any date of determination, Lenders having or holding more than 66-2/3% of the aggregate Revolving Exposure of all Lenders; **provided** that the aggregate Revolving Exposure of or held by any Defaulting Lender or Disqualified Lender shall be excluded for purposes of making a determination of Super Majority Lenders at any time.

“**Supplemental Administrative Agent**” and “**Supplemental Administrative Agents**” have the meanings specified in **Section 10.12(a)**.

“**Supported QFC**” has the meaning specified in **Section 11.26(a)**.

“**Suppressed Availability**” means, the amount, if positive, by which the Borrowing Base exceeds the Aggregate Commitments.

“**Swap Obligations**” means with respect to any Guarantor any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“**Swap Termination Value**” means, in respect of any one or more Hedge Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Agreements, (a) for any date on or after the date such Hedge Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in **clause (a)**, the amount(s) determined as the mark-to-market value(s) for such Hedge Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedge Agreements (which may include a Lender or any Affiliate of a Lender).

“**Swing Line Lender**” means Citibank, in its capacity as the Swing Line Lender hereunder, together with its permitted successors and assigns in such capacity.

“**Swing Line Loan**” means the swing line loan made by the Swing Line Lender to the Borrower pursuant to **Section 2.03**.

“**Swing Line Loan Request**” means a Swing Line Loan Request substantially in the form of **Exhibit A-4**, or such other form as approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

“**Swing Line Note**” means a promissory note in the form of **Exhibit B-2**, as it may be amended, restated, supplemented or otherwise modified from time to time.

“**Swing Line Sublimit**” means \$45,000,000.

“**Taxes**” has the meaning specified in **Section 3.01(a)**.

“**Term Benchmark**” means when used in connection with any Loan, refers to whether such Loan bears interest at a rate determined by reference to:

(a) if such Loan is denominated in Dollars, Adjusted Term SOFR, and

(b) if such Loan is denominated in an Alternative Currency, the risk-free reference rate (**RFR**) applicable to such Alternative Currency as agreed to by the Administrative Agent, the Borrower and each Revolving Lender providing such Revolving Loans, Incremental Revolving Facilities or Extended Revolving Loans (in its sole discretion);

provided, that notwithstanding the foregoing, Term Benchmark shall in no event be less than 0.00% per annum with respect to (a) Revolving Loans made to the Borrower pursuant to Section 2.01(a), and (b) all other Revolving Loans, unless an alternate Floor is specifically noted in the documentation with respect to such other Revolving Loans or such documentation with respect to such other Revolving Loans specifically provides that there shall be no Floor.

“Term Benchmark Loan” means a Loan that bears interest at a rate based upon the applicable Term Benchmark.

“Term Loan” has the meaning assigned to such term in the Term Loan Credit Agreement (as in effect on the date hereof).

“Term Loan Agent” means Citibank, in its capacity as administrative agent and collateral agent in respect of the Term Loan Credit Agreement, together with its successors and assigns in such capacity.

“Term Loan Credit Agreement” means the (i) term loan credit agreement, to be entered into as of the Closing Date, among the Borrower, the lenders party thereto and the Term Loan Agent, as such document may be amended, restated, supplemented or otherwise modified from time to time (ii) any other credit agreement, loan agreement, note agreement, promissory note, indenture or other agreement or instrument evidencing or governing the terms of any Indebtedness or other financial accommodation that has been incurred to refinance (subject to the limitations set forth herein (including by reference to the Closing Date ABL Intercreditor Agreement)) in whole or in part the Indebtedness and other obligations outstanding under (x) the credit agreement referred to in **clause (i)** or (y) any subsequent Term Loan Credit Agreement, unless such agreement or instrument expressly provides that it is not intended to be and is not a Term Loan Credit Agreement hereunder. Any reference to the Term Loan Credit Agreement hereunder shall be deemed a reference to any Term Loan Credit Agreement then in existence.

“Term Loan Documents” means the Term Loan Credit Agreement and the other **“Loan Documents”** as defined in the Term Loan Credit Agreement, as each such document may be amended, restated, supplemented or otherwise modified.

“Term Loan Facility” means any **“Facility”** as defined in the Term Loan Credit Agreement (as in effect on the date hereof).

“Term Loan Obligations” means the **“Obligations”** as defined in the Term Loan Credit Agreement (as in effect on the date hereof).

“Term Priority Collateral” means the **“Fixed Asset Collateral”** as defined in the Closing Date ABL Intercreditor Agreement.

“**Term SOFR**” means,

(a) for any calculation with respect to a Term Benchmark Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “**Periodic Term SOFR Determination Day**”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to a Base Rate Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “**Base Rate Term SOFR Determination Day**”) that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Base Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Base Rate SOFR Determination Day.

“**Term SOFR Adjustment**” means, for any calculation with respect to a Base Rate Loan or a Term Benchmark Loan denominated in Dollars, a percentage per annum as set forth below for the applicable Type of such Loan and Interest Period therefor:

Base Rate Loan:

| 0.11448%

Term Benchmark Loan:

<u>Interest Period</u>	<u>Percentage</u>
One month	0.11448 %
Three months	0.26161%

Six months

0.42826%

“**Term SOFR Administrator**” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

“**Term SOFR Reference Rate**” means the forward-looking term rate based on SOFR.

“**Termination Conditions**” means, collectively, (a) the payment in full in cash of the Obligations (other than (i) contingent indemnification obligations as to which no claim has been asserted, (ii) Obligations under Secured Hedge Agreements as to which alternative arrangements acceptable to the Hedge Bank thereunder have been made and (iii) Cash Management Obligations) and (b) the termination of the Commitments and the termination or expiration of all Letters of Credit under this Agreement (unless backstopped or Cash Collateralized in an amount equal to 103% of the maximum drawable amount of any such Letter of Credit or otherwise in an amount and/or in a manner reasonably acceptable to the Issuing Banks).

“**Test Period**” in effect at any time means the most recent period of four consecutive fiscal quarters of the Borrower ended on or prior to such time (taken as one accounting period) in respect of which financial statements for each quarter or fiscal year in such period are available (which may be internal financial statements except to the extent this Agreement otherwise expressly states that the Test Period is specified in a Compliance Certificate, in which case such financial statements shall have been delivered pursuant to **Section 6.01(a)** or **(b)** for the Test Period set forth in such Compliance Certificate). A Test Period may be designated by reference to the last day thereof (*i.e.*, the ‘January 31st Test Period’ of a particular year refers to the period of four consecutive fiscal quarters of the Borrower ended on or about January 31st of such year), and a Test Period shall be deemed to end on the last day thereof.

“**Threshold Amount**” means the greater of (a) 25.00% of Closing Date EBITDA and (b) 25.00% of TTM Consolidated Adjusted EBITDA.

“**Total Net Leverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated Net Debt as of the last day of such Test Period to (b) Consolidated Adjusted EBITDA of the Borrower for such Test Period.

“**Total Utilization of Revolving Commitments**” means, as of any date of determination, the sum of (i) the aggregate principal amount of all outstanding Revolving Loans other than Revolving Loans made for the purpose of repaying any Refunded Swing Line Loans or reimbursing the Issuing Banks for any amount drawn under any Letter of Credit, but not yet so applied, (ii) the aggregate principal amount of all outstanding Swing Line Loans and (iii) the Letter of Credit Usage.

“**Transaction Expenses**” means any fees or expenses incurred or paid by the Borrower or any of its Subsidiaries in connection with the Transactions, this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby, including any amortization thereof in any period, including any amortization thereof in any period.

“**Transactions**” means, collectively, the funding of the initial Term Loans under the Term Loan Credit Facility, the receipt of the Revolving Commitments and funding of the Revolving Loans on the Closing Date, the Closing Date Refinancing and the payment of the Transaction Expenses.

“**Treasury Equity Interests**” has the meaning specified in **Section 7.06(o)**.

“**Trust Fund Account**” means any account containing cash consisting solely of Trust Funds.

“**Trust Fund Certificate**” means a certificate of a Responsible Officer of the Borrower certifying (a) the type and amount of any Trust Funds (other than payroll and employee benefit payments, in each case, in the nature of discretionary contributions) contained or held in a Blocked Account, (b) that the failure to remit such Trust Funds to the Person entitled thereto could reasonably be expected to result in personal, criminal or civil liability to any director, officer or employee of any Loan Party or any Subsidiary of any Loan Party under any applicable Law and (c) that (x) the obligation requiring such Trust Funds is due and payable within 10 Business Days of delivery of such certificate and (y) amounts on deposit in any applicable Trust Fund Account are insufficient to make such payment.

“**Trust Funds**” means any cash or Cash Equivalents or other investment property comprised of (a) funds used or to be used for payroll and payroll taxes and other employee benefit payments to or for the benefit of any Loan Party’s employees, (b) funds used or to be used to pay all Taxes required to be collected, remitted or withheld (including, without limitation, federal, state, provincial and other withholding Taxes (including the employer’s share thereof)) and (c) any other funds which any Loan Party (i) holds on behalf of another Person (other than the Borrower or any of its Subsidiaries) or (ii) holds as an escrow or fiduciary for another Person (other than the Borrower or any of its Subsidiaries).

“**TTM Consolidated Adjusted EBITDA**” means, as of any date of determination, the Consolidated Adjusted EBITDA of the Borrower and the Restricted Subsidiaries, determined on a Pro Forma Basis, for the most recent Test Period.

“**Type**” means, with respect to a Loan, its character as a Base Rate Loan or Term Benchmark Loan.

“**UK Financial Institution**” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“**UK Resolution Authority**” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“**Unadjusted Benchmark Replacement**” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment

“**Undisclosed Administration**” means, in relation to a Lender or its direct or indirect parent entity, the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian, or other similar official by a supervisory authority or regulator under or based on the law in the country where such Lender or such parent entity is subject to home jurisdiction supervision, if applicable Law requires that such appointment not be disclosed.

“**Unfunded Advances/Participations**” means (a) with respect to the Administrative Agent, the aggregate amount, if any (i) made available to the Borrower on the assumption that each Lender has made available to the Administrative Agent such Lender’s share of the applicable Borrowing available to the Administrative Agent as contemplated by **Sections 2.01(b)(ii)** and (ii) with respect to which a corresponding amount shall not in fact have been returned to the Administrative Agent by the Borrower or made available to the Administrative Agent by any such Lender, (b) with respect to the Swing Line Lender, the aggregate amount, if any, of outstanding Swing Line Loans in respect of which any Revolving Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to **Section 2.03(c)** and (c) with respect to the Issuing Banks, the aggregate amount, if any, of amounts drawn under Letters of Credit in respect of which a Revolving Lender shall have failed to make amounts available to the applicable Issuing Banks pursuant to **Section 2.04(c)**.

“**Uniform Commercial Code**” means the Uniform Commercial Code or any successor provision thereof as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code or any successor provision thereof (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“**United States**” and “**U.S.**” mean the United States of America.

“**Unrestricted Subsidiary**” means (a) each Securitization Subsidiary and (b) any Subsidiary of the Borrower designated by the Board of Directors of the Borrower as an Unrestricted Subsidiary pursuant to **Section 6.13** subsequent to the date hereof and each Subsidiary of such Subsidiary, in each case, until such Person ceases to be an Unrestricted Subsidiary of the Borrower in accordance with **Section 6.13** or ceases to be a Subsidiary of the Borrower.

“**U.S. Government Securities Business Day**” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“**U.S. Lender**” has the meaning specified in **Section 3.01(e)**.

“**U.S. Special Resolution Regimes**” has the meaning specified in **Section 10.26(a)**.

“**USA PATRIOT Act**” means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Public Law No. 107-56 (signed into law October 26, 2001)), as amended or modified from time to time.

“**Weighted Average Life to Maturity**” means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

(a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment, by

(b) the then outstanding principal amount of such Indebtedness;

provided that for purposes of determining the Weighted Average Life to Maturity of (i) any Permitted Refinancing, (ii) any Indebtedness that is being modified, refinanced, refunded, renewed, replaced or extended, or (iii) any term loans for purposes of incurring any other Indebtedness (in any such case, the “*Applicable Indebtedness*”), the effects of any amortization payments or other prepayments made on such Applicable Indebtedness (including the effect of any prepayment on remaining scheduled amortization) prior to the date of the applicable modification, refinancing, refunding, renewal, replacement, extension or incurrence shall be disregarded.

“**wholly owned**” means, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (a) director’s qualifying shares and (b) nominal shares issued to foreign nationals to the extent required by applicable Law) are owned by such Person and/or by one or more wholly owned Subsidiaries of such Person.

“**Withdrawal Liability**” means the liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“**Withholding Agent**” means the Borrower, any Guarantor or the Administrative Agent.

“**Write-Down and Conversion Powers**” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) (i) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(ii) references in this Agreement to an Exhibit, Schedule, Article, Section, clause or sub-clause refer (A) to the appropriate Exhibit or Schedule to, or Article, Section, clause or sub-clause in this Agreement or (B) to the extent such references are not present in this Agreement, to the Loan Document in which such reference appears.

(iii) the term “including” is by way of example and not limitation.

(iv) the term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(v) the phrase “permitted by” and the phrase “not prohibited by” shall be synonymous, and any transaction not specifically prohibited by the terms of the Loan Documents shall be deemed to be permitted by the Loan Documents;

(vi) the phrase “commercially reasonable efforts” shall not require the payment of a fee or other amount to any third party or the incurrence of any expense or liability by a Loan Party (or Affiliate) outside its ordinary course of its business;

(vii) the phrase “in good faith” when used with respect to a determination made by a Loan Party shall mean that such determination was made in the prudent exercise of its commercial judgment and shall be deemed to be conclusive if fully disclosed in writing (in reasonable detail) to the Administrative Agent and the Lenders and neither the Administrative Agent nor the Required Lenders have objected to such determination within ten (10) Business Days of such disclosure to the Administrative Agent and the Lenders;

(viii) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including;” and

(ix) the term “continuing” means, with respect to a Default or Event of Default, that it has not been cured (including through performance) or waived.

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction’s laws) (a “**Division**”), if (a) any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

Section 1.03 Accounting and Finance Terms; Accounting Periods; Unrestricted Subsidiaries; Determination of Fair Market Value. All accounting terms, financial terms or components of such terms not specifically or completely defined herein shall be construed in

conformity with GAAP to the extent GAAP defines such term or a component of such term. To the extent GAAP does not define any such term or a component of any such term, such term shall be calculated by the Borrower in good faith. For purposes of calculating any consolidated amounts necessary to determine compliance by any Person and, if applicable, its Restricted Subsidiaries with any ratio or other financial covenant in this Agreement, Unrestricted Subsidiaries shall be excluded. Unless the context indicates otherwise, any reference to a “fiscal year” shall refer to a fiscal year of the Borrower ending on or about January 31 and any reference to a “fiscal quarter” shall refer to a fiscal quarter of the Borrower ending on or about April 30, July 31, October 31 or January 31. All determinations of fair market value under a Loan Document shall be made by the Borrower in good faith and if such determination is consistent with a valuation or opinion of an Independent Financial Advisor, such determination shall be conclusive for all purposes under the Loan Documents or related to the Obligations.

Section 1.04 Rounding. Any financial ratios required to be satisfied in order for a specific action to be permitted under this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one decimal place more than the number of decimal places by which such ratio is expressed herein (the “*Applicable Decimal Place*”) and rounding the result up or down to the Applicable Decimal Place.

Section 1.05 References to Agreements, Laws, Etc. Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are permitted by this Agreement (including by way of amendment and/or waiver); and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

Section 1.06 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to New York City time (daylight or standard, as applicable).

Section 1.07 [Reserved].

Section 1.08 Pro Forma Calculations; Limited Condition Transactions; Basket and Ratio Compliance.

(a) Notwithstanding anything to the contrary herein, the First Lien Net Leverage Ratio, the Secured Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio and the Fixed Charge Coverage Ratio shall be calculated in the manner prescribed by this **Section 1.08**; *provided*, that notwithstanding anything to the contrary in **clauses (b), (c) or (d)** of this **Section 1.08**, when calculating the Fixed Charge Coverage Ratio for purposes of **Section 8.01**, the events described in this **Section 1.08** that occurred subsequent to the end of the applicable Test Period shall not be given *pro forma* effect.

(b) For purposes of calculating the First Lien Net Leverage Ratio, the Secured Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio and the Fixed Charge Coverage Ratio, Specified Transactions identified by the Borrower that have been made (i) during

the applicable Test Period or (ii) subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a *pro forma* basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated Adjusted EBITDA and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period. If since the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of its Restricted Subsidiaries since the beginning of such Test Period shall have consummated any Specified Transaction identified by the Borrower that would have required adjustment pursuant to this **Section 1.08**, then the First Lien Net Leverage Ratio, the Secured Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio and the Fixed Charge Coverage Ratio shall be calculated to give *pro forma* effect thereto in accordance with this **Section 1.08**.

(c) Whenever *pro forma* effect is to be given to a Specified Transaction, the *pro forma* calculations shall be made in good faith by a Responsible Officer and may include, for the avoidance of doubt, the amount of cost savings, operating expense reductions; synergies, material changes to amounts to be paid by or received by Loan Parties projected by the Borrower in good faith to be realized as a result of specified actions taken, committed to be taken or expected to be taken (calculated on a *pro forma* basis as though amounts had been realized on the first day of such Test Period and as if any such cost savings, operating expense reductions and synergies were realized during the entirety of such period) relating to such Specified Transaction, net of the amount of actual benefits realized during such period from such actions (such amounts, “***Specified Transaction Adjustments***”); **provided** that (i) such Specified Transaction Adjustments are reasonably identifiable and quantifiable in the good faith judgment of the Borrower, (ii) such actions are taken, committed to be taken or expected to be taken no later than twenty-four months after the date of such Specified Transaction, and (iii) no amounts shall be included pursuant to this **clause (c)** to the extent duplicative of any amounts that are otherwise included in calculating Consolidated Adjusted EBITDA, whether through a *pro forma* adjustment or otherwise, with respect to any Test Period.

(d) In the event that the Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, retirement or extinguishment) any Indebtedness included in the calculations of the First Lien Net Leverage Ratio, the Secured Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio and the Fixed Charge Coverage Ratio, as the case may be (in each case, other than Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes), (i) during the applicable Test Period or (ii) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then the First Lien Net Leverage Ratio, the Secured Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio and the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect to such incurrence or repayment of Indebtedness, to the extent required, as if the same had occurred on the last day of the applicable Test Period with respect to leverage ratios or the first day of such Test Period with respect to the Interest Coverage Ratio and the Fixed Charge Coverage Ratio.

(e) Notwithstanding anything in this Agreement or any Loan Document to the contrary

(i) the Borrower may rely on more than one basket or exception within any Section (including both ratio-based and non-ratio based baskets and exceptions, and including partial reliance on different baskets that, collectively, permit the entire proposed transaction) at the time of any proposed transaction, and the Borrower may, in its sole discretion, at any later time divide, classify or reclassify such transaction (or any portion thereof) in any manner that complies with the available baskets and exceptions under such Section at such later time (*provided* that with respect to reclassification of Indebtedness and Liens, any such reclassification shall be subject to the parameters of **Sections 7.01** and **7.03**, as applicable);

(ii) unless the Borrower elects otherwise, if the Borrower or its Restricted Subsidiaries in connection with any transaction or series of such related transaction (A) incurs Indebtedness, creates Liens, makes Dispositions, makes Investments, designates any Subsidiary as restricted or unrestricted or repays any Indebtedness or takes any other action under or as permitted by a ratio-based basket and (B) incurs Indebtedness, creates Liens, makes Dispositions, makes Investments, designates any Subsidiary as restricted or unrestricted or repays any Indebtedness or takes any other action under a non-ratio-based basket (which shall occur within five Business Days of the events in **clause (A)** above), then the applicable ratio will be calculated with respect to any such action under the applicable ratio-based basket without regard to any such action under such non-ratio-based basket made in connection with such transaction or series of related transactions;

(iii) if the Borrower or its Restricted Subsidiaries enters into any revolving, delayed draw or other committed debt facility, the Borrower may elect to determine compliance of such debt facility (including the incurrence of Indebtedness and Liens from time to time in connection therewith) with this Agreement and each other Loan Document on the date commitments with respect thereto are first received, assuming the full amount of such facility is incurred (and any applicable Liens are granted) on such date, in which case such committed amount may thereafter be borrowed or reborrowed, in whole or in part, from time to time, without further compliance with the Loan Documents, in lieu of determining such compliance on any subsequent date (including any date on which Indebtedness is incurred pursuant to such facility); *provided* that, in each case, any future calculation of any such ratio based basket shall only include amounts borrowed and outstanding as of such date of determination; and

(iv) if the Borrower or any Restricted Subsidiary incurs Indebtedness under a ratio-based basket, such ratio-based basket (together with any other ratio-based basket utilized in connection therewith, including in respect of other Indebtedness, Liens, Dispositions, Investments, Restricted Payments or payments in respect of Junior Financing) will be calculated excluding the cash proceeds of such Indebtedness for netting purposes (i.e., such cash proceeds shall not reduce the Borrower's Consolidated Net Debt or Consolidated Secured Net Debt pursuant to **clause (b)** of the definition of such terms), *provided* that the actual application of such proceeds may reduce Indebtedness for purposes of determining compliance with any applicable ratio.

(f) Notwithstanding anything in this Agreement or any Loan Document to the contrary, when

- (i) calculating any applicable ratio in connection with the incurrence of Indebtedness, the creation of Liens, the making of any Disposition, the making of an Investment, the making of a Restricted Payment, the designation of a Subsidiary as restricted or unrestricted, the repayment of Indebtedness or for any other purpose,
- (ii) determining the accuracy of any representation or warranty,
- (iii) determining whether any Default or Event of Default has occurred, is continuing or would result from any action, or
- (iv) determining compliance with any other condition precedent to any action or transaction;

in each case of **clauses (i)** through **(iv)** in connection with a Limited Condition Acquisition, the date of determination of such ratio, the accuracy of such representation or warranty (but taking into account any earlier date specified therein), whether any Default or Event of Default has occurred, is continuing or would result therefrom, or the satisfaction of any other condition precedent shall, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Acquisition, an "**LCA Election**"), be deemed to be the date the definitive agreements for such Limited Condition Acquisition are entered into (the "**LCA Test Date**"). If on a Pro Forma Basis after giving effect to such Limited Condition Acquisition and the other transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) such ratios, representations and warranties, absence of defaults, satisfaction of conditions precedent and other provisions are calculated as if such Limited Condition Acquisition or other transactions had occurred at the beginning of the most recent Test Period ending prior to the LCA Test Date for which financial statements are available, the Borrower could have taken such action on the relevant LCA Test Date in compliance with the applicable ratios or other provisions, such provisions shall be deemed to have been complied with, unless a Specified Event of Default is continuing on the date on which such Limited Condition Acquisition is consummated. For the avoidance of doubt,

- (i) if any of such ratios, representations and warranties, absence of defaults, satisfaction of conditions precedent or other provisions are exceeded or breached as a result of fluctuations in such ratio (including due to fluctuations in Consolidated Adjusted EBITDA), a change in facts and circumstances or other provisions at or prior to the consummation of the relevant Limited Condition Acquisition, such ratios, representations and warranties, absence of defaults, satisfaction of conditions precedent and other provisions will not be deemed to have been exceeded, breached, or otherwise failed as a result of such fluctuations or changed circumstances solely for purposes of determining whether the Limited Condition Acquisition and any related transactions is permitted hereunder and
- (ii) such ratios and compliance with such conditions shall not be tested at the time of consummation of such Limited Condition Acquisition or related Specified Transactions.

If the Borrower has made an LCA Election for any Limited Condition Acquisition, then in connection with any subsequent calculation of any ratio or basket availability with respect to any

other Specified Transaction or otherwise on or following the relevant LCA Test Date and prior to the earlier of the date on which such Limited Condition Acquisition is consummated or the date that the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition, any such ratio or basket shall be calculated on a Pro Forma Basis assuming such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated. For purposes of any calculation pursuant to this **clause (f)** of the Interest Coverage Ratio, Consolidated Interest Expense may be calculated using an assumed interest rate for the Indebtedness to be incurred in connection with such Limited Condition Acquisition based on the indicative interest margin contained in any financing commitment documentation with respect to such Indebtedness or, if no such indicative interest margin exists, as reasonably determined by the Borrower in good faith.

Notwithstanding the forgoing,

(i) in connection with any transaction permitted hereunder that requires satisfaction of the Payment Conditions, the Borrower will be required to comply as of the date of such transaction with the Excess Availability requirements (but not, for the avoidance of doubt, **clause (b)(i)** of the definition of “**Payment Conditions**” or any requirements relating to the Fixed Charge Coverage that are satisfied on the LCA Test Date to the extent the Borrower shall have made an LCA Election in connection with such transaction) set forth in the definition of “**Payment Conditions**”, regardless of whether the Borrower shall have made an LCA Election in connection with such transaction and

(ii) in connection with any Credit Extension, the Total Utilization of Revolving Commitments shall not exceed the Line Cap on the date of such Credit Extension (other than as provided under **Section 2.02**).

(g) For purposes of calculating the Permitted Ratio Debt and **Section 7.01(i)** (including for purposes of **Section 7.03(l)(ii)**), the phrase “immediately prior to such incurrence” shall be construed to apply only if, at the time of such determination, on a Pro Forma Basis for such incurrence of Indebtedness and/or Liens (and for any related Permitted Investment, if applicable), (i) the First Lien Net Leverage Ratio would be greater than the Closing Date First Lien Net Leverage Ratio, (ii) the Secured Net Leverage Ratio would be greater than the Closing Date Secured Net Leverage Ratio, (iii) the Total Net Leverage Ratio would be greater than the Closing Date Total Net Leverage Ratio or (iv) the Interest Coverage Ratio would be less than 2.00 to 1.00.

(h) For purposes of determining the maturity date of any Indebtedness, bridge loans that are subject to customary conditions (as determined by the Borrower in good faith, including conditions requiring no payment or bankruptcy event of default) that would either automatically be extended as, converted into or required to be exchanged for permanent refinancing shall be deemed to have the maturity date as so extended, converted or exchanged.

Section 1.09 Currency Equivalents Generally.

(a) No Default or Event of Default shall be deemed to have occurred under a Loan Document solely as a result of changes in rates of currency exchange occurring after the time any

applicable action (including any incurrence of a Lien or Indebtedness or the making of an Investment) so long as such action (including any incurrence of a Lien or Indebtedness or the making of an Investment) was permitted hereunder when made.

(b) For purposes of this Agreement and the other Loan Documents, where the permissibility of a transaction or determinations of required actions or circumstances depend upon compliance with, or are determined by reference to, amounts stated in Dollars, any requisite currency translation shall be based on the rate of exchange between the applicable currency and Dollars as reasonably determined by the Borrower, in each case in effect on the Business Day immediately preceding the date of such transaction or determination (subject to **clauses (c) and (d)** below) and shall not be affected by subsequent fluctuations in exchange rates; **provided**, that the determination of any Dollar Amount shall be made in accordance with **Section 2.23**.

(c) For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the Exchange Rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt (or, in the case of an LCA Election, on the date of the applicable LCA Test Date); **provided** that, if such Indebtedness is incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the Exchange Rate in effect on the date of such refinancing, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such Indebtedness so refinanced does not exceed the principal amount of such Indebtedness being refinanced; **provided, further** that the determination of any Dollar Amount shall be made in accordance with **Section 2.23**. Notwithstanding the foregoing, the principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the Exchange Rate that is in effect on the date of such refinancing.

(d) For purposes of determining the First Lien Net Leverage Ratio, the Secured Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio and the Fixed Charge Coverage Ratio, including Consolidated Adjusted EBITDA when calculating such ratios, all amounts denominated in a currency other than Dollars will be converted to Dollars for any purpose (including testing the any financial maintenance covenant) at the effective rate of exchange in respect thereof reflected in the consolidated financial statements of the Borrower for the applicable Test Period for which such measurement is being made, and will reflect the currency translation effects, determined in accordance with GAAP, of Hedge Agreements permitted hereunder for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar equivalent of such Indebtedness.

(e) All references in the Loan Documents to Loans, Letters of Credit, Obligations, Borrowing Base components and other amounts shall be denominated in Dollars, unless expressly provided otherwise. The Dollar Amount of any amounts denominated or reported under a Loan Document in a currency other than Dollars shall be determined by the Administrative Agent on a daily basis based on the current Exchange Rate. The Borrower shall report Borrowing Base components to the Administrative Agent in the currency invoiced by the Loan Parties or shown in the Loan Parties' financial records, and unless expressly provided otherwise, the Borrower shall

deliver financial statements and calculate financial covenants in Dollars. Notwithstanding anything herein to the contrary, if any Obligation is funded and expressly denominated in a currency other than Dollars, the Borrower shall repay such Obligation in such other currency.

Section 1.10 Co-Borrowers. Notwithstanding anything herein to the contrary, the Borrower, upon 15 Business Days' prior written notice to the Administrative Agent (or such shorter period as reasonably agreed by the Administrative Agent), may cause any Loan Party on or after the Closing Date by written election to the Administrative Agent to become a borrower (each such Loan Party, a "*Co-Borrower*", and, together with the Borrower, the "*Co-Borrowers*") under each of the Facilities hereunder on a joint and several basis (such date, the "*Co-Borrower Effective Date*"); *provided* that such Loan Party shall

- (i) execute a joinder to this Agreement in form and substance reasonably satisfactory to the Administrative Agent assuming all obligations of a Co-Borrower hereunder,
- (ii) at least three Business Days prior to such Co-Borrower Effective Date, provide to the Administrative Agent and the Lenders all documentation and other information required by United States regulatory authorities under applicable "know your customer" and anti-money laundering Laws, including without limitation Title III of the USA Patriot Act, that shall be reasonably requested by the Administrative Agent in writing at least 10 Business Days prior to the consummation of such joinder,
- (iii) provide to the Administrative Agent and the Lenders, if such Loan Party qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, a Beneficial Ownership Certification,
- (iv) be a domestic Subsidiary Guarantor wholly owned by the Borrower and
- (v) not cause any Lender to be in violation of Law as a result of becoming a Co-Borrower.

The Lenders hereby irrevocably authorize the Administrative Agent to enter into any amendment to this Agreement or to any other Loan Document as may be necessary or appropriate in order to establish any additional Borrower pursuant to this **Section 1.10** and such technical amendments, and other customary amendments with respect to provisions of this Agreement relating to taxes for borrowers, in each case as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrower in connection therewith.

Upon the later of execution and delivery of a joinder to this Agreement by a Co-Borrower and the countersignature of the Administrative Agent thereto, each Co-Borrower agrees that it is jointly and severally liable for the obligations of each other Co-Borrower hereunder with respect to any Class of Loans on an individual tranche basis, including with respect to the payment of principal of and interest on all Loans on an individual tranche basis, the payment of amounts owing in respect of Letters of Credit and the payment of fees and indemnities and reimbursement of costs and expenses. Each Co-Borrower is accepting joint and several liability hereunder in consideration of the financial accommodations to be provided by the Administrative Agent, the Collateral Agent and the Lenders under this Agreement, for the mutual benefit, directly and indirectly, of each of

the Co-Borrowers and in consideration of the undertakings of each of the Co-Borrowers to accept joint and several liability for the obligations of each of them. Each Co-Borrower, jointly and severally, hereby irrevocably and unconditionally accepts, as a co-debtor, joint and several liability with each other Co-Borrower, with respect to the payment and performance of all of the Obligations, it being the intention of the parties hereto that all Obligations shall be the joint and several obligations of all of the Co-Borrowers without preferences or distinction among them. If and to the extent that any of the Co-Borrowers shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of such Obligations in accordance with the terms thereof, then in each such event each other Borrower will make such payment with respect to, or perform, such Obligations. Each Co-Borrower further agrees that the Borrower will be such Co-Borrower's agent for administrative, mechanical, and notice provisions in this Agreement and any other Loan Document and the Lenders and the Administrative Agent hereby agree that each Co-Borrower will have the same rights under the Loan Documents as if it is the Borrower and for any other purposes under the provisions of this Agreement, including the affirmative and negative covenants, each such Co-Borrower will be treated as a Restricted Subsidiary that is a Subsidiary Guarantor.

ARTICLE II. THE COMMITMENTS AND BORROWINGS

Section 2.01 Revolving Loans.

(a) **Revolving Loan Commitment.** During the Revolving Commitment Period, subject to the terms and conditions hereof, each Lender severally agrees to make revolving loans to the Borrower from time to time on any Business Day in Dollars and/or any Alternative Currency ("**Revolving Loans**") in an aggregate amount (expressed in the Dollar Amount thereof in the case of an Alternative Currency) up to but not exceeding such Lender's Revolving Commitment; *provided*, that after giving effect to the making of any Revolving Loans in no event shall the Total Utilization of Revolving Commitments exceed the Line Cap. Within the foregoing limits and subject to the terms and conditions set forth herein (including the Administrative Agent's authority, in its sole discretion, to make Protective Advances pursuant to the terms of **Section 2.02**), amounts borrowed pursuant to this **Section 2.01(a)** may be repaid and reborrowed during the Revolving Commitment Period. Each Lender's Revolving Commitment shall expire on the Revolving Commitment Termination Date, and all Revolving Loans and all other amounts owed hereunder with respect to the Revolving Loans and the Revolving Commitments shall be paid in full no later than such date.

(b) **Borrowing Mechanics for Revolving Loans.**

(i) Subject to **Section 4.01(a)(i)** in the case of Borrowings of Revolving Loans on the Closing Date only and **Section 4.02(c)** in the case of each other Borrowing of Revolving Loans, each Borrowing of Revolving Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may only be given in writing (each request for a Swing Line Loan Borrowing shall be made in accordance with **Section 2.03**). Each such notice must be received by the Administrative Agent not later than (A) 1:30 p.m. (New York City time) three Business Days prior to the requested date of any Borrowing of Term Benchmark Loans, and (B) 1:00 p.m. (New York City time) on the requested date of

any Borrowing of Base Rate Loans; *provided*, that such notices may be conditioned on the occurrence of the Closing Date, the commercially reasonable efforts of the Borrower to deliver a Borrowing Base Certificate or, with respect to any Incremental Facility, the occurrence of any transaction anticipated to occur in connection with such Incremental Facility; *provided, further*, that if the Borrower wishes to request Term Benchmark Loans denominated in Dollars having an Interest Period other than one, three or six months in duration as provided in the definition of “*Interest Period*,” the applicable notice must be received by the Administrative Agent not later than 11:00 a.m. four Business Days prior to the requested date of such Borrowing, conversion or continuation, whereupon the Administrative Agent shall give prompt notice to the Appropriate Lenders of such request and determine whether the requested Interest Period is acceptable to all of them. Not later than 11:00 a.m., three Business Days before the requested date of such Borrowing, conversion or continuation, the Administrative Agent shall notify the Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the Lenders. Each notice by the Borrower pursuant to this **Section 2.01(b)** must be delivered to the Administrative Agent in the form of a Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each Borrowing of Term Benchmark Loans shall be in a principal amount of (A) \$500,000 or a whole multiple of \$100,000 in excess thereof in the case of Term Benchmark Loans denominated in Dollars, (B) [reserved] and (C) a Dollar Amount of \$500,000 or a whole multiple of \$100,000 in excess thereof in the case of Term Benchmark Loans denominated in any Alternative Currency. Each Borrowing of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Committed Loan Notice shall specify (1) that the Borrower is requesting a Revolving Loan Borrowing, (2) the requested date of the Borrowing (which shall be a Business Day), (3) the principal amount of Revolving Loans to be borrowed, (4) the Type of Revolving Loans to be borrowed, (5) with respect to any Term Benchmark Loan, the currency of the Revolving Loan, which shall be Dollars or an Alternative Currency; *provided* that the Borrower shall deliver to the Administrative Agent any request for designation of an Alternative Currency in accordance with **Section 11.02**, to be received by the Administrative Agent no later than 11:00 a.m. (New York City time) at least 15 Business Days in advance of the date of any Borrowing hereunder proposed to be made in such Alternative Currency (or such other time or date as may be agreed by the Administrative Agent and, in the case of any such request pertaining to Letters of Credit, the applicable Issuing Bank(s), in its or their sole discretion) and (6) if applicable, the duration of the Interest Period with respect thereto. Each Swing Line Loan shall be a Base Rate Loan. If the Borrower fails to specify a Type of Revolving Loan in a Committed Loan Notice, then (x) in the case of Revolving Loans denominated in Dollars, the applicable Revolving Loans shall be made as Base Rate Loans and (y) in the case of Revolving Loans denominated in an Alternative Currency, the applicable Revolving Loans shall be made as Term Benchmark Loans with an Interest Period of one month. If the Borrower requests a Borrowing of Term Benchmark Loans in any such Committed Loan Notice, but fails to specify an Interest Period for such Term Benchmark Loans, the Borrower will be deemed to have specified an Interest Period of one month.

(ii) Borrowings of more than one Type may be outstanding at the same time: *provided* that the total number of Interest Periods for Term Benchmark Loans outstanding under this Agreement at any time shall comply with **Section 2.10(g)**.

(iii) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Pro Rata Share of the applicable Revolving Loans. In the case of each Borrowing, each Appropriate Lender shall make the amount of its Revolving Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office not later than (x) for Borrowings of Term Benchmark Loans, 12:00 p.m. (New York City time), on the Business Day specified in the applicable Committed Loan Notice and (y) for Borrowings of Base Rate Loans, 3:00 p.m. (New York City time), on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in **Section 4.02** (or if such Borrowing is on the Closing Date, **Section 4.01**), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (A) crediting the account of the Borrower on the books of the Administrative Agent with the amount of such funds or (B) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; *provided, however*, that if, on the date the Committed Loan Notice with respect to such Borrowing is given by the Borrower, there are Swing Line Loans outstanding or Reimbursement Obligations outstanding, then the proceeds of such Borrowing shall be applied, first, to the payment in full of any such Reimbursement Obligations, second, to the payment in full of any such Swing Line Loans and third, to the Borrower as provided above.

(iv) The failure of any Lender to make the Revolving Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Revolving Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Revolving Loan to be made by such other Lender on the date of any Borrowing.

Section 2.02 Protective Advances.

(a) Subject to the limitations set forth below (and notwithstanding anything to the contrary in **Section 4.02**), the Administrative Agent is authorized by the Borrower and the Lenders, from time to time in the Administrative Agent's sole discretion in the exercise of its commercially reasonable judgment (but shall not have any obligation) to make Revolving Loans denominated in Dollars to the Borrower, on behalf of all Lenders at any time that any condition precedent set forth in **Section 4.02** has not been satisfied or waived, which the Administrative Agent, in its Permitted Discretion, deems necessary or desirable (i) to preserve or protect the Collateral, or any portion thereof, (ii) to enhance the likelihood of, or maximize the amount of, repayment of the Revolving Loans and other Obligations or (iii) to pay any other amount chargeable to or required to be paid by the Borrower pursuant to the terms of this Agreement, including payments of reimbursable expenses (including costs, fees, and expenses as described in **Section 11.04**) and other sums, in each case to the extent due and payable (and not in dispute by the Borrower (acting in good faith)) under the Loan Documents (each such Revolving Loan, a "*Protective Advance*"). Any Protective Advance may be made in a principal amount that would cause the Total Utilization of Revolving

Commitments to exceed the Borrowing Base; **provided** that no Protective Advance may be made to the extent that, after giving effect to such Protective Advance (together with the outstanding principal amount of any outstanding Protective Advances), the aggregate principal amount of Protective Advances outstanding hereunder would exceed 10.0% of the Borrowing Base as determined on the date of such proposed Protective Advance; **provided, further**, that the total Revolving Exposure shall not exceed the aggregate amount of the Revolving Commitments then in effect. Each Protective Advance shall be secured by the Liens in favor of the Administrative Agent in and to the Collateral and shall constitute Obligations hereunder. The Agent's authorization to make Protective Advances may be revoked by the Required Lenders at any time. Any such revocation must be in writing and shall become effective prospectively upon the Administrative Agent's receipt thereof. The making of a Protective Advance on any one occasion shall not obligate the Administrative Agent to make any Protective Advance on any other occasion. At any time (and in any event no less than weekly) that the conditions precedent set forth in **Section 4.02** have been satisfied or waived, the Administrative Agent may request the Lenders to make a Revolving Loan to repay a Protective Advance. At any other time, the Administrative Agent may require the Lenders to fund their risk participations described in **Section 2.02(b)**. Each Protective Advance shall be a Base Rate Loan.

(b) Upon the making of a Protective Advance by the Administrative Agent (whether before or after the occurrence of a Default or Event of Default), each Lender shall be deemed, without further action by any party hereto, unconditionally and irrevocably to have purchased from the Administrative Agent without recourse or warranty, an undivided interest and participation in such Protective Advance in proportion to its Pro Rata Share. From and after the date, if any, on which any Lender is required to fund its participation in any Protective Advance purchased hereunder, the Administrative Agent shall promptly distribute to such Lender, such Lender's Pro Rata Share of all payments of principal and interest and all proceeds of Collateral (if any) received by the Administrative Agent in respect of such Protective Advance.

Section 2.03 Swing Line Loans.

(a) **Swing Line Loan.** Subject to the terms and conditions set forth herein, the Swing Line Lender, in reliance on the agreements of the Revolving Lenders set forth in this **Section 2.03**, agrees to make Swing Line Loans denominated in Dollars to the Borrower from time to time on any Business Day during the Revolving Commitment Period, in an aggregate principal amount not to exceed at any time outstanding the amount of the Swing Line Sublimit; **provided** that, after giving effect to any Swing Line Loan, (i) the Total Utilization of Revolving Commitments shall not exceed the Line Cap, (ii) the Total Utilization of Revolving Commitments of any Revolving Lender shall not exceed such Lender's Revolving Commitment and (iii) the aggregate principal amount outstanding of all Swing Line Loans shall not exceed the Swing Line Sublimit; **provided, further**, that the Swing Line Lender shall not be required to make a Swing Line Loan to refinance an outstanding Swing Line Loan. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Swing Line Loans. Immediately upon the making of a Swing Line Loan by the Swing Line Lender, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a participation in such Swing Line Loan in an amount equal to such Revolving Lender's Pro Rata Share of the amount of such Swing Line Loan.

(b) **Borrowing Mechanics for Swing Line Loans.** Each Swing Line Loan Borrowing shall be made upon the Borrower's irrevocable notice to the Swing Line Lender. Each such notice may be given by: (A) telephone, or (B) a Swing Line Loan Request; *provided* that any telephonic notice by the Borrower must be confirmed immediately by delivery to the Swing Line Lender and the Administrative Agent of a Swing Line Loan Request. Each such Swing Line Loan Request must be received by the Swing Line Lender and the Administrative Agent not later than 2:00 p.m. (New York City time) on the date of the requested Swing Line Loan Borrowing, and such notice shall specify (i) the amount to be borrowed, which shall be in a minimum principal amount of \$100,000 or a whole multiple of \$25,000 in excess thereof, and (ii) the date of such Swing Line Loan Borrowing (which shall be a Business Day). Promptly after receipt by the Swing Line Lender of such notice, the Swing Line Lender will confirm with the Administrative Agent that the Administrative Agent has also received such notice and, if not, the Swing Line Lender will notify the Administrative Agent of the contents thereof. Unless the Swing Line Lender has received notice from the Administrative Agent (including at the request of the Required Lenders) prior to 2:00 p.m. (New York City time) on such requested borrowing date (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the first sentence of **Section 2.03(a)** or (B) that one or more of the applicable conditions set forth in **Section 4.02** is not then satisfied, then, subject to the terms and conditions set forth herein, the Swing Line Lender shall make each Swing Line Loan available to the Borrower, by wire transfer thereof in accordance with instructions provided to (and reasonably acceptable to) the Swing Line Lender, not later than 5:00 p.m. (New York City time) on the requested date of such Swing Line Loan (which instructions may include standing payment instructions, which may be updated from time to time by the Borrower, *provided* that, unless the Swing Line Lender shall otherwise agree, any such update shall not take effect until the Business Day immediately following the date on which such update is provided to the Swing Line Lender).

(c) **Refinancing of Swing Line Loans.**

(i) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Borrower (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Revolving Lender make a Revolving Loan that is a Base Rate Loan in an amount equal to such Lender's Pro Rata Share of the amount of Swing Line Loans made by then Swing Line Lender then outstanding (the "*Refunded Swing Line Loans*"). Such request shall be made in writing (which written request shall be deemed to be a Committed Loan Notice for purposes hereof) and in accordance (including with respect to prior notice requirements) with the requirements of **Section 2.03(b)**, without regard to the minimum and multiples specified therein, but subject to the aggregate unused Revolving Commitments and the conditions set forth in **Section 4.02**. The Swing Line Lender shall furnish the Borrower with a copy of such Committed Loan Notice promptly after delivering such notice to the Administrative Agent. Each Revolving Lender shall make an amount equal to its Pro Rata Share of the amount specified in such Committed Loan Notice available to the Administrative Agent in immediately available funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable Swing Line Loan) for the account of the Swing Line Lender at the Administrative Agent's Office not later than 1:00 p.m. (New York City time) on the day specified in such Committed Loan Notice, whereupon, subject to **Section 2.03(c)(ii)**, each

Revolving Lender that so makes funds available shall be deemed to have made a Revolving Loan that is a Base Rate Loan to the Borrower in such amount.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Loan Borrowing in accordance with **Section 2.03(c)(i)**, the request for Revolving Loans that are Base Rate Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Revolving Lenders fund its participation in the relevant Swing Line Loan and each Revolving Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to **Section 2.03(c)(i)** shall be deemed payment in respect of such participation. The Administrative Agent shall notify the Borrower on the last Business Day of each week of any participations in any Swing Line Loan funded during such week pursuant to this **clause (ii)**, and thereafter payments in respect of such Swing Line Loan (to the extent of such funded participations) shall be made to the Administrative Agent for the benefit of the Lenders and not to the Swing Line Lender.

(iii) If any Revolving Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Revolving Lender pursuant to the foregoing provisions of this **Section 2.03(c)** by the time specified in **Section 2.03(c)(i)**, the Swing Line Lender (acting through the Administrative Agent) shall be entitled to recover from such Revolving Lender, on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate from time to time in effect and a rate determined by the Swing Line Lender in accordance with banking industry rules on interbank compensation, *plus* any reasonable administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. If such Revolving Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Revolving Loan Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the Swing Line Lender submitted (through the Administrative Agent) to any Revolving Lender with respect to any amounts owing under this **clause (iii)** shall be conclusive absent manifest error.

(iv) Each Revolving Lender's obligation to make Revolving Loans or to purchase and fund participations in Swing Line Loans pursuant to this **Section 2.03(c)** shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; **provided** that each Revolving Lender's obligation to make Revolving Loans pursuant to this **Section 2.03(c)** is subject to the conditions set forth in **Section 4.02**; **provided, further**, that for the avoidance of doubt, the conditions set forth in **Section 4.02** shall not apply to the purchase or funding of participations pursuant to this **Section 2.03(c)**. No such funding of participations shall relieve or otherwise impair the obligation of the Borrower to repay Swing Line Loans, together with interest as provided herein.

(d) **Repayment of Participations.**

(i) At any time after any Revolving Lender has purchased and funded a participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will promptly remit such Revolving Lender's Pro Rata Share of such payment to the Administrative Agent (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Lender's participation was funded) in like funds as received by the Swing Line Lender, and any such amounts received by the Administrative Agent will be remitted by the Administrative Agent to the Revolving Lenders that shall have funded their participations pursuant to **Section 2.03(c)(ii)** to the extent of their interests therein.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in **Section 11.06** (including pursuant to any settlement entered into by the Swing Line Lender in its reasonable discretion), each Revolving Lender shall pay to such Swing Line Lender its Pro Rata Share thereof on demand of the Administrative Agent, *plus* interest thereon from the date of such demand to the date such amount is returned at a rate per annum equal to the Federal Funds Rate from time to time in effect. The Administrative Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Revolving Lenders under this **clause (ii)** shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) **Interest for Account of Swing Line Lender.** The Swing Line Lender shall be responsible for invoicing the Borrower for interest on the Swing Line Loans made by the Swing Line Lender. Until each Revolving Lender funds its Revolving Loan that is a Base Rate Loan or participation pursuant to this **Section 2.03** to refinance such Lender's Pro Rata Share of any Swing Line Loan made by the Swing Line Lender, interest in respect of such Lender's share thereof shall be solely for the account of the Swing Line Lender.

(f) **Payments Directly to Swing Line Lender.** Except as otherwise expressly provided herein, the Borrower shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

Section 2.04 Issuance of Letters of Credit and Purchase of Participations Therein.

(a) **Letter of Credit Commitment.**

(i) Subject to the terms and conditions set forth herein, (A) each Issuing Bank agrees, in reliance upon the agreements of the Revolving Lenders set forth in this **Section 2.04**, (1) from time to time on any Business Day during the Revolving Commitment Period on or prior to the fifth Business Day prior to the Revolving Commitment Termination Date, to issue Letters of Credit for the account of the Borrower or a Restricted Subsidiary (*provided* that any Letter of Credit issued for the benefit of any Restricted Subsidiary shall be issued for the account of the Borrower but such Letter of Credit shall indicate that it is being issued for the benefit of such Restricted Subsidiary) and to amend, renew or extend Letters of Credit previously issued by it, in accordance with **Section 2.04(b)** and (2) to

honor drawings under the Letters of Credit; and (B) the Revolving Lenders severally agree to participate in such Letters of Credit and any drawings thereunder; **provided** that the Issuing Banks shall not be obligated to make any Letter of Credit Extension if, as of the date of such Letter of Credit Extension, (1) the Total Utilization of Revolving Commitments would exceed the Line Cap, (2) the Total Utilization of Revolving Commitments of any Revolving Lender, would exceed such Lender's Revolving Commitment, (3) the Letter of Credit Usage would exceed the Letter of Credit Sublimit or (4) the Letter of Credit Usage with respect to Letters of Credit issued by such Issuing Bank would exceed the amount of such Issuing Bank's Letter of Credit Percentage of the Letter of Credit Sublimit. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

- (ii) An Issuing Bank shall not be under any obligation to issue any Letter of Credit if:
 - (a) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any Law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such Issuing Bank in good faith deems material to it (for which such Issuing Bank is not otherwise compensated hereunder);
 - (b) the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally;
 - (c) except as otherwise agreed by the Administrative Agent and such Issuing Bank, such Letter of Credit is in an initial stated amount less than \$10,000;
 - (d) such Letter of Credit is to be denominated in a currency other than Dollars or, if agreed by such Issuing Bank, an Alternative Currency;
 - (e) such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder; and

(f) any Revolving Lender is at such time a Defaulting Lender, unless such Issuing Bank has entered into arrangements, including reallocation of such Lender's Pro Rata Share of the outstanding Letter of Credit Obligations pursuant to **Section 2.19(a)(iii)** or the delivery of Cash Collateral, satisfactory to such Issuing Bank (in its sole discretion) with the Borrower or such Lender to eliminate such Issuing Bank's actual or potential Fronting Exposure (after giving effect to **Section 2.19(a)(iii)**) with respect to such Lender arising from either the Letter of Credit then proposed to be issued or such Letter of Credit and all other Letter of Credit Obligations as to which such Issuing Bank has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(iii) No Issuing Bank shall be under any obligation to amend or extend any Letter of Credit if (A) such Issuing Bank would have no obligation at such time to issue the Letter of Credit in its amended form under the terms hereof or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment thereto.

(iv) Unless Cash Collateralized or backstopped pursuant to arrangements reasonably acceptable to the applicable Issuing Bank, each standby Letter of Credit shall expire at or prior to the close of business on the earlier of (A) the date twelve months after the date of issuance of such Letter of Credit (or, in the case of any Auto-Renewal Letter of Credit, twelve months after the then current expiration date of such Letter of Credit) and (B) the Letter of Credit Expiration Date (unless arrangements reasonably satisfactory to the Issuing Banks have been entered into).

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto Renewal Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the irrevocable request of the Borrower delivered to the applicable Issuing Bank (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such Letter of Credit Application must be received by the applicable Issuing Bank and the Administrative Agent not later than 2:00 p.m. (New York City time) at least five Business Days (or such shorter period as the applicable Issuing Bank and the Administrative Agent may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the applicable Issuing Bank

- (a) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day);
- (b) the amount thereof;
- (c) the expiry date thereof;
- (d) the name and address of the beneficiary thereof;

- (e) the documents to be presented by such beneficiary in case of any drawing thereunder;
- (f) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder;
- (g) the currency in which the requested Letter of Credit will be denominated (which must be Dollars or, if approved by such Issuing Bank, an Alternative Currency) and
- (h) such other matters as the applicable Issuing Bank may reasonably request.

In the case of a request for an amendment of any outstanding Letter of Credit, the Letter of Credit Application shall specify in form and detail reasonably satisfactory to the applicable Issuing Bank

- (1) the Letter of Credit to be amended;
- (2) the proposed date of amendment thereof (which shall be a Business Day); and
- (3) the nature of the proposed amendment.

Additionally, the Borrower shall furnish to the applicable Issuing Bank and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Letter of Credit Documents, as the applicable Issuing Bank or the Administrative Agent may reasonably require.

(ii) Promptly after receipt of any Letter of Credit Application, the applicable Issuing Bank will confirm with the Administrative Agent that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, the applicable Issuing Bank will provide the Administrative Agent with a copy thereof. Upon receipt by the applicable Issuing Bank of confirmation from the Administrative Agent that the requested issuance or amendment is permitted in accordance with the terms hereof, then, subject to the terms and conditions set forth herein, such Issuing Bank shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be. Immediately upon the issuance of each Letter of Credit, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the applicable Issuing Bank a participation in such Letter of Credit in an amount equal to such Lender's Pro Rata Share of the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application for a standby Letter of Credit, the applicable Issuing Bank may, in its reasonable discretion, agree to issue a standby Letter of Credit that has automatic renewal provisions (each, an "***Auto-Renewal Letter of Credit***"); ***provided*** that any such Auto-Renewal Letter of Credit shall permit such Issuing Bank to prevent any such renewal at least once in each

twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the “*Nonrenewal Notice Date*”) in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the applicable Issuing Bank, the Borrower shall not be required to make a specific request to such Issuing Bank for any such renewal. Once an Auto-Renewal Letter of Credit has been issued, the Revolving Lenders shall be deemed to have authorized (but may not require) the applicable Issuing Bank to permit the renewal of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; *provided, however*, that no Issuing Bank shall

(A) permit any such renewal if (1) such Issuing Bank has determined that it would not be permitted at such time to issue such Letter of Credit in its renewed form under the terms hereof (by reason of the provisions of **clause (ii)** or **(iii)** of **Section 2.04(a)** or otherwise) or (2) it has received written notice on or before the day that is thirty (30) days before the Nonrenewal Notice Date from the Administrative Agent that the Required Lenders have elected not to permit such renewal or

(B) be obligated to permit such renewal if it has received written notice on or before the day that is thirty (30) days before the Nonrenewal Notice Date from the Administrative Agent, any Revolving Lender or the Borrower that one or more of the applicable conditions set forth in **Section 4.02** is not then satisfied, and in each such case directing the applicable Issuing Bank not to permit such renewal.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable Issuing Bank will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) **Drawings and Reimbursement; Funding of Participations.**

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the applicable Issuing Bank shall notify the Borrower and the Administrative Agent thereof, and such Issuing Bank shall, within a reasonable time following its receipt thereof, examine all documents purporting to represent a demand for payment under such Letter of Credit. If an Issuing Bank notifies the Borrower of any payment by such Issuing Bank under a Letter of Credit, then the Borrower shall reimburse such Issuing Bank in an amount equal to the amount of such drawing not later than 3:00 p.m. (New York City time, in the case of drawings in Dollars, or London time, in the case of drawings in an Alternative Currency) on the next succeeding Business Day. If the Borrower fails to so reimburse such Issuing Bank by such time, such Issuing Bank shall promptly notify the Administrative Agent of such failure and the Administrative Agent shall promptly thereafter notify each Revolving Lender of such payment date, the amount of the unreimbursed drawing (expressed in the Dollar Amount thereof in the case of an Alternative Currency) (the “*Reimbursement Obligations*”) and the amount of such Lender’s Pro Rata Share thereof. In such event, (x) the Borrower shall be deemed to have requested a Revolving Loan Borrowing of Base Rate Loans to be disbursed on such date

in an amount equal to such Reimbursement Obligation, without regard to the minimum and multiples specified in **Section 2.02(b)** for the principal amount of Base Rate Loans and (y) in the case of Reimbursement Obligations denominated in an Alternative Currency (but expressed in its Dollar Amount), the Borrower shall be deemed to have requested on behalf of the applicable Revolving Lender Revolving Loans that are Term Benchmark Loans denominated in Dollars, in each case, to be disbursed on such date in an amount equal to (A) the Dollar Amount of such Reimbursement Obligation, plus (B) in the case of any Reimbursement Obligation denominated in any Alternative Currency (but expressed in its Dollar Amount), an additional amount equal to the amount required to convert Dollars into the currency of the unreimbursed drawing, without regard to the minimum and multiples specified in **Section 2.03(b)** for the principal amount of Base Rate Loans, but subject to the Line Cap and the conditions set forth in **Section 4.02** (other than delivery of a Committed Loan Notice). Any notice given by an Issuing Bank or the Administrative Agent pursuant to this **clause (i)** shall be given in writing.

(ii) Each Revolving Lender (including each Revolving Lender acting as an Issuing Bank) shall upon any notice pursuant to **Section 2.04(c)(i)** make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) for the account of the applicable Issuing Bank, in Dollars or the applicable Alternative Currency, at the Administrative Agent's Office in an amount equal to its Pro Rata Share of the relevant Reimbursement Obligation not later than 3:00 p.m. (New York City time) on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of **Section 2.04(c)(iii)**, each Revolving Lender that so makes funds available shall be deemed to have made a Revolving Loan that is (A) in the case of Letters of Credit denominated in Dollars, a Base Rate Loan and (B) in the case of Letters of Credit denominated in an Alternative Currency, a Term Benchmark Loan in such Alternative Currency with an Interest Period of one month, in each case to the Borrower in such amount *plus*, in the case of any Reimbursement Obligation denominated in any Alternative Currency (but expressed in its Dollar Amount), an additional amount equal to the amount required to convert Dollars into the currency of the unreimbursed drawing. The Administrative Agent shall remit the funds so received to the applicable Issuing Bank in accordance with the instructions provided to the Administrative Agent by such Issuing Bank (which instructions may include standing payment instructions, which may be updated from time to time by such Issuing Bank, *provided* that, unless the Administrative Agent shall otherwise agree, any such update shall not take effect until the Business Day immediately following the date on which such update is provided to the Administrative Agent).

(iii) With respect to any Reimbursement Obligation that is not fully refinanced by a Revolving Loan Borrowing of Base Rate Loans for Letters of Credit denominated in Dollars or Term Benchmark Loans for Letters of Credit denominated in an Alternative Currency, as the case may be, because the conditions set forth in **Section 4.02** cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the applicable Issuing Bank a Letter of Credit Borrowing in the amount of the Reimbursement Obligation that is not so refinanced *plus*, in the case of any Reimbursement Obligation denominated in an Alternative Currency (but expressed in its Dollar Amount), an additional amount equal to the amount required to convert Dollars into the currency of the

unreimbursed drawing, which Letter of Credit Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate then applicable to Revolving Loans that are Base Rate Loans. In such event, each Revolving Lender's payment to the Administrative Agent for the account of such Issuing Bank pursuant to **Section 2.04(c)(i)** shall be deemed payment in respect of its participation in such Letter of Credit Borrowing and shall constitute a Letter of Credit Advance from such Lender in satisfaction of its participation obligation under this Section.

(iv) Until each Revolving Lender funds its Revolving Loan or Letter of Credit Advance to reimburse the applicable Issuing Bank for any amount drawn under any Letter of Credit, interest in respect of such Lender's Pro Rata Share of such amount shall be solely for the account of such Issuing Bank.

(v) Each Revolving Lender's obligations to make Revolving Loans or Letter of Credit Advances to reimburse an Issuing Bank for amounts drawn under Letters of Credit, as contemplated by this **Section 2.04(c)**, shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against such Issuing Bank, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default; or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided* that each Revolving Lender's obligation to make Revolving Loans pursuant to this paragraph (c) is subject to the conditions set forth in **Section 4.02**. No such funding of a participation in any Letter of Credit shall relieve or otherwise impair the obligation of the Borrower to reimburse an Issuing Bank for the amount of any payment made by such Issuing Bank under such Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Lender fails to make available to the Administrative Agent for the account of the applicable Issuing Bank any amount required to be paid by such Lender pursuant to the foregoing provisions of this paragraph (c) by the time specified in **Section 2.04(c)(ii)**, then, without limiting the other provisions of this Agreement, such Issuing Bank shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such Issuing Bank at a rate *per annum* equal to the greater of the Federal Funds Rate from time to time in effect and a rate determined by such Issuing Bank in accordance with banking industry rules on interbank compensation, *plus* any reasonable administrative, processing or similar fees customarily charged by such Issuing Bank in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Borrowing or Letter of Credit Advance in respect of the relevant Letter of Credit Borrowing, as the case may be. A certificate of the applicable Issuing Bank submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this **clause (vi)** shall be conclusive absent manifest error.

(d) **Repayment of Participations.**

(i) If, at any time after the applicable Issuing Bank has made payment in respect of any drawing under any Letter of Credit issued by it and has received from any Revolving Lender its Letter of Credit Advance in respect of such payment in accordance with **Section 2.04(c)**, if the Administrative Agent receives for the account of such Issuing Bank any payment in respect of the related Reimbursement Obligation or, in the case of any Reimbursement Obligation denominated in any Alternative Currency (but expressed in its Dollar Amount), an additional amount equal to the amount required to convert Dollars into the currency of the unreimbursed drawing or, in each case, interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Pro Rata Share thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's Letter of Credit Advance was outstanding) in like funds as received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the applicable Issuing Bank pursuant to **Section 2.04(c)(i)** is required to be returned under any of the circumstances described in **Section 11.06** (including pursuant to any settlement entered into by such Issuing Bank in its discretion), each Revolving Lender shall pay to the Administrative Agent for the account of such Issuing Bank its Pro Rata Share thereof on demand of the Administrative Agent, *plus* interest thereon from the date of such demand to the date such amount is returned by such Lender at a rate *per annum* equal to the Federal Funds Rate from time to time in effect. The obligations of the Revolving Lenders under this **clause (ii)** shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) **Obligations Absolute.** The obligation of the Borrower to reimburse the Issuing Banks for each drawing under each Letter of Credit and to repay each Letter of Credit Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit or any term or provision thereof, any Loan Document, or any other agreement or instrument relating thereto;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the Issuing Banks or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by an Issuing Bank under such Letter of Credit against presentation of documents that do not comply strictly with the terms of such Letter of Credit; or any payment made by an Issuing Bank under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor in possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including arising in connection with any case or proceeding under any Debtor Relief Law;

(v) any exchange, release or non-perfection of any collateral, or any release or amendment or waiver of or consent to departure from any guarantee, for all or any of the Obligations of the Borrower in respect of such Letter of Credit; or

(vi) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will promptly notify the applicable Issuing Bank. The Borrower shall be conclusively deemed to have waived any such claim against any Issuing Bank and its correspondents unless such notice is given as aforesaid.

(f) **Role of Issuing Banks.** Each Revolving Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the Issuing Banks shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by such Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any document or the authority of the Person executing or delivering any document. None of any Issuing Bank, any Agent Affiliate nor any of the respective correspondents, participants or assignees of any Issuing Bank shall be liable to any Revolving Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the requisite Revolving Lenders; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Letter of Credit Application. The Borrower hereby assumes all risks of the acts of omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided* that this assumption is not intended to, and shall not, preclude the Borrower from pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the Issuing Banks, any Agent Affiliate nor any of the respective correspondents, participants or assignees of the Issuing Banks shall be liable or responsible for any of the matters described in **Section 2.04(e)**; *provided* that, notwithstanding anything in such clauses to the contrary, the Borrower may have a claim against an Issuing Bank, and an Issuing Bank may be liable to the Borrower, to the extent, but only to the extent, of any direct (as opposed to indirect, special, punitive, consequential or exemplary) damages suffered by the Borrower which a court of competent jurisdiction determines in a final non-appealable judgment were caused by such Issuing Bank's gross negligence or willful misconduct or such Issuing Bank's willful or grossly negligent failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a document(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the applicable

Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the Issuing Banks shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The Issuing Banks may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication (SWIFT) message or overnight courier, or any other commercially reasonable means of communication with a beneficiary.

(g) **Applicability of ISP.** Unless otherwise expressly agreed by the applicable Issuing Bank and the Borrower when a standby Letter of Credit is issued, the rules of the “*International Standby Practices 1998*” published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance) shall apply to such standby Letter of Credit.

(h) **Conflict with Letter of Credit Application.** In the event of any conflict between the terms of this Agreement and the terms of any Letter of Credit Application, the terms hereof shall control.

(i) **Reporting.** Each day (or at such other intervals as the Administrative Agent and the applicable Issuing Bank shall agree), the applicable Issuing Bank shall provide to the Administrative Agent a schedule of the Letters of Credit issued by it, in form and substance reasonably satisfactory to the Administrative Agent, showing the date of issuance of each Letter of Credit, the account party, the original face amount (if any), the expiration date, and the reference number of any Letter of Credit outstanding at any time during such month, and showing the aggregate amount (if any) payable by the Borrower to such Issuing Bank during such month.

(j) **Existing Letters of Credit.** Subject to the terms and conditions hereof, (i) Letters of Credit may be issued on the Closing Date to backstop or replace letters of credit outstanding on the Closing Date or (ii) all letters of credit issued for the account of the Borrower or any Restricted Subsidiary and outstanding on the Closing Date and issued by an entity that is an Issuing Bank under this Agreement, which, by its execution of this Agreement, has agreed to act as an Issuing Bank hereunder and listed on **Schedule 2.04** (each, an “*Existing Letter of Credit*”) shall automatically be continued hereunder on the Closing Date by such Issuing Bank, and as of the Closing Date the Lenders shall acquire a participation therein as if such Existing Letter of Credit were issued hereunder, and each such Existing Letter of Credit shall be deemed a Letter of Credit for all purposes of this Agreement as of the Closing Date without any further action by the Borrower.

(k) **Resignation and Removal of an Issuing Bank.** Any Issuing Bank may resign as an Issuing Bank upon sixty (60) days’ prior written notice to the Administrative Agent, the Lenders and the Borrower. Any Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the Issuing Bank being replaced (*provided* that no consent will be required if the Issuing Bank being replaced has no Letters of Credit or Reimbursement Obligations with respect thereto outstanding) and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of an Issuing Bank. At the time any such

replacement or resignation shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank. From and after the effective date of any such replacement or resignation, (i) any successor Issuing Bank shall have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term “**Issuing Bank**” shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement or resignation of an Issuing Bank hereunder, the replaced or resigning Issuing Bank shall remain a party hereto to the extent that Letters of Credit issued by it remain outstanding and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement or resignation, but shall not be required to issue additional Letters of Credit.

(l) **Cash Collateral Account.** At any time and from time to time (i) after the occurrence and during the continuance of an Event of Default, the Administrative Agent, at the direction or with the consent of the Required Lenders, may require the Borrower, to deliver to the Administrative Agent such amount of cash as is equal to 103% (or if not denominated in Dollars, 110%) of the aggregate Stated Amount of all Letters of Credit at any time outstanding (whether or not any beneficiary under any Letter of Credit shall have drawn or be entitled at such time to draw thereunder) and (ii) to the extent any amount of a required prepayment under **Section 2.07(b)(i)** remains after prepayment of all outstanding Loans and Letter of Credit Obligations and termination of the Commitments, as contemplated by **Section 2.07(d)**, the Administrative Agent will retain such amount as may then be required to be retained, such amounts in each case under **clauses (i)** and **(ii)** above to be held by the Administrative Agent in a Cash Collateral Account. The Borrower hereby grants (or, if registration thereof is required in any applicable jurisdiction, shall grant) to the Administrative Agent, for the benefit of the Issuing Banks and the Lenders, a Lien upon and security interest in the Cash Collateral Account and all amounts held therein from time to time as security for Letter of Credit Usage, and for application to the Borrower’s Letter of Credit Obligations as and when the same shall arise. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest on the investment of such amounts in Cash Equivalents, which investments shall be made at the direction of the Borrower (unless an Event of Default shall have occurred and be continuing, in which case the determination as to investments shall be made at the option and in the discretion of the Administrative Agent), amounts in the Cash Collateral Account shall not bear interest. Interest and profits, if any, on such investments shall accumulate in such account. In the event of a drawing, and subsequent payment by the applicable Issuing Bank, under any Letter of Credit at any time during which any amounts are held in the Cash Collateral Account, the Administrative Agent will deliver to such Issuing Bank an amount equal to the Reimbursement Obligation created as a result of such payment plus any additional amount payable hereunder in respect of any Reimbursement Obligation denominated in an Alternative Currency (or, if the amounts so held are less than such Reimbursement Obligation, all of such amounts) to reimburse such Issuing Bank therefor. Any amounts remaining in the Cash Collateral Account after the expiration of all Letters of Credit and reimbursement in full of each Issuing Bank for all of its obligations thereunder shall be held by the Administrative Agent, for the benefit of the Borrower, to be applied against the Obligations in such order and manner as the Administrative Agent may direct. If the Borrower is required to provide Cash Collateral pursuant to this **Section 2.04(l)**, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower on demand, **provided** that after giving effect to such return (A) the sum of (1) the aggregate principal dollar

amount of all Revolving Loans outstanding at such time and (2) the aggregate Letter of Credit Usage at such time would not exceed the aggregate Revolving Commitments at such time and (B) no Event of Default shall have occurred and be continuing at such time. If the Borrower is required to provide Cash Collateral pursuant to **Section 2.07(b)**, as contemplated by **Section 2.07(d)**, such amount shall be returned to the Borrower on demand; *provided* that, after giving effect to such return, all outstanding Letters of Credit shall have expired and each Issuing Bank shall have been reimbursed in full for all of its obligations thereunder. If the Borrower is required to provide Cash Collateral as a result of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three Business Days after all Events of Default have been cured or waived.

(m) Addition of an Issuing Bank. One or more Revolving Lenders (other than a Defaulting Lender) selected by the Borrower that agrees to act in such capacity and reasonably acceptable to the Administrative Agent may become an additional Issuing Bank hereunder pursuant to a written agreement in form and substance reasonably satisfactory to the Administrative Agent among the Borrower, the Administrative Agent and such Revolving Lender. The Administrative Agent shall notify the Revolving Lenders of any such additional Issuing Bank.

Section 2.05 Conversion/Continuation.

(a) Each conversion of Loans from one Type to another, and each continuation of Term Benchmark Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may only be given in writing; *provided* that Revolving Loans denominated in an Alternative Currency may not be converted into Base Rate Loans. Each such notice must be received by the Administrative Agent not later than 1:00 p.m. (New York City time, in the case of Loans denominated in Dollars, or London time, in the case of Loans denominated in an Alternative Currency) on the requested date of any conversion of Term Benchmark Loans to Base Rate Loans and not later than 1:00 p.m. (New York City time) three Business Days prior to the requested date of continuation of any Term Benchmark Loans or any conversion of Base Rate Loans to Term Benchmark Loans. Each notice by the Borrower pursuant to this **Section 2.05(a)** must be delivered to the Administrative Agent in the form of a Conversion/Continuation Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each conversion to or continuation of (x) Term Benchmark Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof, if denominated in Dollars, (y) [reserved] or (z) a Dollar Amount of \$500,000 or a whole multiple of a Dollar Amount of \$100,000 in excess thereof if denominated in an Alternative Currency. Each conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Conversion/Continuation Notice shall specify (i) whether the Borrower is requesting a conversion of Loans from one Type to the other, or a continuation of Term Benchmark Loans, (ii) the requested date of the conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be converted or continued, (iv) the Class of Loans to be converted or continued, (v) the Type of Loans to which such existing Loans are to be converted, if applicable, and (vi) if applicable, the duration of the Interest Period with respect thereto. If (x) with respect to any Term Benchmark Loans denominated in Dollars, the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be converted to Base Rate Loans, and (y) with respect to any Term Benchmark Loans denominated in any Alternative Currency, the Borrower fails to give a timely notice requesting a conversion or

continuation, then the applicable tranche of Revolving Loans shall be converted to a Term Benchmark Loan with an Interest Period of one month. Any such automatic conversion or continuation pursuant to the immediately preceding sentence shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Term Benchmark Loans. If the Borrower requests a conversion to, or continuation of Term Benchmark Loans in any such Conversion/Continuation Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. No Loan may be converted into or continued as a Loan denominated in a different currency, but instead must be prepaid in the original currency of such Loan and reborrowed in the other currency.

(b) Following receipt of a Conversion/Continuation Notice, the Administrative Agent shall promptly notify each applicable Lender of its Pro Rata Share of the applicable Class of Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans or continuation of Loans described in **Section 2.05(a)**.

(c) Except as otherwise provided herein, a Term Benchmark Loan may be continued or converted only on the last day of an Interest Period for such Term Benchmark Loan. Upon the occurrence and during the continuation of an Event of Default, the Administrative Agent or the Required Lenders may require by notice to the Borrower that no Loans denominated in Dollars may be converted to or continued as Term Benchmark Loans. This Section shall not apply to Swing Line Loans or Protective Advances, which may not be converted or continued.

Section 2.06 **Availability.** Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's Pro Rata Share of such Borrowing, the Administrative Agent may assume that such Lender has made such Pro Rata Share available to the Administrative Agent on the date of such Borrowing, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available, then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, each of such Lender and the Borrower severally agrees to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent at (a) in the case of the Borrower, the interest rate applicable at the time to the applicable Loans comprising such Borrowing and (b) in the case of such Lender, the Overnight Rate *plus* any administrative, processing, or similar fees customarily charged by the Administrative Agent in accordance with the foregoing. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this **Section 2.06** shall be conclusive in the absence of manifest error. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's applicable Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent. A notice of the

Administrative Agent to any Lender or the Borrower with respect to any amount owing under this **subsection (b)** shall be conclusive, absent manifest error.

Section 2.07 Prepayments.

(a) **Optional.**

(i) The Borrower may, upon notice to the Administrative Agent in the form of a Prepayment Notice, at any time or from time to time, voluntarily prepay the Loans in whole or in part without premium or penalty; *provided* that:

(a) such Prepayment Notice must be received by the Administrative Agent (1) not later than 2:00 p.m. (New York City time, in the case of Loans denominated in Dollars, or London time, in the case of Loans denominated in an Alternative Currency) three Business Days prior to any date of prepayment of Term Benchmark Loans, (2) not later than 1:00 p.m. (New York City time) one Business Day prior to any date of prepayment of Base Rate Loans and (3) not later than 5:00 p.m. (New York City time) one Business Day prior to any date of prepayment of Swing Line Loans or Protective Advances;

(b) any prepayment of Term Benchmark Loans (x) denominated in Dollars shall be in a principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding, (y) [reserved] and (z) denominated in an Alternative Currency, shall be in a principal Dollar Amount of \$1,000,000 or a whole multiple of the Dollar Amount of \$100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding; and

(c) any prepayment of Base Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding (it being understood that Base Rate Loans shall be denominated in Dollars only).

Each Prepayment Notice shall specify the date and amount of such prepayment and the Class(es) and Type(s) of Loans to be prepaid, and the payment amount specified in each Prepayment Notice shall be due and payable on the date specified therein. The Administrative Agent will promptly notify each Appropriate Lender of its receipt of a Prepayment Notice and of the amount of such Lender's Pro Rata Share of such prepayment; *provided*, "non-consenting" Lenders may be repaid on a non-pro rata basis in connection with an Extension Offer and Disqualified Lenders may be repaid on a non-pro rata basis in accordance with **Section 11.27**. Any prepayment of Loans shall be subject to **Section 2.07(c)**. Revolving Loans, Incremental Revolving Loans and Swing Line Loans prepaid pursuant to this **subsection (a)** may be reborrowed, subject to the terms and conditions of this Agreement.

(ii) Notwithstanding anything to the contrary contained in this Agreement, the Borrower may rescind, in whole or in part, any notice of prepayment under **Section 2.07(a)(i)**, if such prepayment would have resulted from a refinancing of all or a portion of

the applicable Facility which refinancing shall not be consummated or shall otherwise be delayed.

(b) **Mandatory.**

(i) If at any time the Total Utilization of Revolving Commitments exceeds the Line Cap, then within one Business Day thereof, the Borrower shall prepay

first, the Swing Line Loans and

second, the Revolving Loans to the extent necessary so that the Total Utilization of Revolving Commitments shall no longer exceed the Line Cap;

provided that, to the extent such excess amount is greater than the aggregate principal dollar amount of Swing Line Loans and Revolving Loans outstanding immediately prior to the application of such prepayment, the amount so prepaid shall be retained by the Administrative Agent and held in the Cash Collateral Account as cover for Letter of Credit Usage, as more particularly described in Section 2.04(1), and thereupon such cash shall be deemed to reduce the aggregate Letter of Credit Usage by an equivalent amount; *provided, further*, that

(1) if the circumstances described in this **Section 2.07(b)** are the result of the imposition of or increase in a Reserve, the Borrower shall not be required to make the initial prepayment or deposit until the fifth Business Day following the date on which Administrative Agent notifies the Borrower of such imposition or increase and

(2) the Letter of Credit Usage may not be reduced to less than zero.

(ii) At all times after the occurrence and during the continuance of a Cash Dominion Period and notification thereof by the Administrative Agent to the Borrower (subject to the provisions of **Sections 2.19, 9.03** and to the terms of the Security Agreement), on each Business Day, at or before 11:00 a.m., New York City time, the Administrative Agent shall apply all immediately available funds credited to the Administrative Agent Account or otherwise received by Administrative Agent for application to the Obligations or Secured Obligations (in the case of **clause sixth** and **clause eighth** below),

first, to payment of any fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under **Section 11.04** and amounts payable under **Article III**) payable to the Administrative Agent and Collateral Agent in their capacity as such;

second, to payment in full of Unfunded Advances/Participations (the amounts so applied to be distributed between or among, as applicable, the Administrative Agent and the Issuing Banks pro rata in accordance with the amounts of Unfunded Advances/Participations owed to them on the date of any such distribution);

third, to payment of fees, indemnities and other amounts (other than principal and interest and Letter of Credit fees) payable to the Lenders and the Issuing Banks (including Attorney Costs payable under **Section 11.04** and amounts payable under **Article III**), ratably among them in proportion to the amounts described in this **clause third** payable to them;

fourth, to payment of accrued and unpaid Letter of Credit fees and interest on the Loans and Letter of Credit Usage, ratably among the Lenders and the Issuing Banks in proportion to the respective amounts described in this **clause fourth** held by them;

fifth, to pay the principal of Protective Advances;

sixth, ratably,

(a) to payment of unpaid principal of the Loans (other than Protective Advances) and the Letter of Credit Usage,

(b) to the extent a Bank Products Reserve has been established therefor by the Administrative Agent in accordance with the terms hereof in respect of a Hedge Bank, to pay the unpaid Reserved Secured Hedge Obligations of such Hedge Bank, including the cash collateralization of such Reserved Secured Hedge Obligations,

(c) to the extent a Bank Products Reserve has been established therefor by the Administrative Agent in accordance the terms hereof, to pay the unpaid Reserved Secured Cash Management Obligations,

(d) to Cash Collateralize Letters of Credit (to the extent not otherwise Cash Collateralized pursuant to the terms of this Agreement) (in an amount equal to 103% (or if not denominated in Dollars, 110%) of the maximum face amount of all outstanding Letters of Credit) and to further permanently reduce the Revolving Commitments by the amount of such Cash Collateralization, ratably among the Secured Parties in proportion to the respective amounts described in this **clause sixth** held by them; *provided* that

(i) any such amounts applied pursuant to the foregoing **subclause (d)** shall be paid to the Administrative Agent for the ratable account of the Issuing Banks to Cash Collateralize such Letters of Credit,

(ii) subject to **Section 2.04** and **Section 2.19**, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to this **clause sixth** shall be applied to satisfy drawings under such Letters of Credit as they occur and

(iii) upon the expiration of any Letter of Credit, the pro rata share of Cash Collateral attributable to such expired Letter of Credit shall be applied by the Administrative Agent in accordance with the priority of payments set forth in this **Section 2.07(b)(ii)**;

seventh, ratably to pay other Obligations then due (other than Obligations in respect of Secured Cash Management Services and Secured Hedge Agreements), until paid in full;

eighth, ratably to pay other Obligations in respect of the Secured Cash Management Services and Secured Hedge Agreements, until paid in full;

ninth, to the payment of all other Obligations of the Loan Parties (other than contingent indemnification obligations for which no claim has yet been made) that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

last, as the Borrower may direct.

(c) **Interest, Funding Losses, Etc.** All prepayments under this **Section 2.07** shall be accompanied by all accrued interest thereon, together with, in the case of any such prepayment of a Term Benchmark Loan on a date prior to the last day of an Interest Period therefor, any amounts owing in respect of such Term Benchmark Loan pursuant to **Section 3.05**.

(d) **Application of Prepayment Amounts.** In the event that the obligation of the Borrower to prepay the Loans shall arise pursuant to **subsection (b)(i)** above,

(i) *first*, the Borrower shall prepay the outstanding principal amount of the Swing Line Loans, without a corresponding permanent reduction to the Revolving Commitments,

(ii) *second*, to the extent of any excess remaining after the prepayment as provided in **clause (i)** above, the Borrower shall pay any outstanding Reimbursement Obligations in respect of Letters of Credit,

(iii) *third*, to the extent of any excess remaining after application as provided in **clauses (i)** and **(ii)** above, the Borrower shall prepay the outstanding principal amount of the Revolving Loans, without a corresponding permanent reduction to the Revolving Commitments, and

(iv) *fourth*, to the extent of any excess remaining after application as provided in **clauses (i), (ii)** and **(iii)** above, thereafter the Borrower shall Cash Collateralize the Letter of Credit Usage pursuant to **Section 2.04(l)**.

Each payment or prepayment pursuant to the provisions of **Section 2.07(b)** shall be applied ratably among the Lenders of each Class holding the Loans being prepaid, in proportion to the

principal amount held by each, and shall be applied as among the Revolving Loans being prepaid,

(A) *first*, to prepay all Base Rate Loans and

(B) *second*, to the extent of any excess remaining after application as provided in **clause (A)** above, to prepay all Term Benchmark Loans (and as among Term Benchmark Loans,

(1) first to prepay those Term Benchmark Loans, if any, having Interest Periods ending on the date of such prepayment, and

(2) thereafter, to the extent of any excess remaining after application as provided in **clause (1)** above, to prepay any Term Benchmark Loans in the order of the expiration dates of the Interest Periods applicable thereto).

Section 2.08 Termination or Reduction of Commitments.

(a) **Optional.** The Borrower may, upon written notice to the Administrative Agent, terminate the unused Commitments of any Class, or from time to time permanently reduce the unused Commitments of any Class, in each case without premium or penalty; *provided* that

(i) any such notice shall be received by the Administrative Agent one Business Day prior to the date of termination or reduction,

(ii) any such partial reduction shall be in an aggregate amount of \$1,000,000 or any whole multiple of \$1,000,000 in excess thereof or, if less, the entire amount thereof and

(iii) the Borrower shall not terminate or reduce

(a) the Revolving Commitments if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with **Section 2.07**, the Total Utilization of Revolving Commitments would exceed the Line Cap,

(b) the Letter of Credit Sublimit if, after giving effect thereto,

(1) the Letter of Credit Usage not fully Cash Collateralized hereunder at 103% (or if not denominated in Dollars, 110%) of the maximum face amount of any such Letters of Credit would exceed the Letter of Credit Sublimit or

(2) the Letter of Credit Usage with respect to Letters of Credit issued by an applicable Issuing Bank not fully Cash Collateralized hereunder at 103% (or if not denominated Dollars, 110%) of the maximum face amount of any such Letters of Credit would exceed the amount of such Issuing Bank's Letter of Credit Percentage of the Letter of Credit Sublimit or

(c) the Swing Line Sublimit, if after giving effect to any concurrent payment of Swing Line Loans in accordance with **Section 2.07**, the Total Utilization of Revolving Commitments with respect to Swing Line Loans would exceed the Swing Line Sublimit.

Notwithstanding the foregoing, the Borrower may rescind or postpone any notice of termination of the Commitments if such termination would have resulted from a refinancing of all or a portion of the applicable Facility, which refinancing shall not be consummated or otherwise shall be delayed.

(b) **Mandatory.**

(i) the Revolving Commitments shall terminate on the Revolving Commitment Termination Date.

(ii) If after giving effect to any reduction or termination of Revolving Commitments under this **Section 2.08**, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Revolving Commitments at such time, the Letter of Credit Sublimit or the Swing Line Sublimit, as the case may be, shall be automatically reduced by the amount of such excess.

(c) **Effect of Termination or Reduction.** Any termination or reduction of the Commitments of any Class shall be permanent. Each reduction of Commitments of any Class shall be made ratably among the Lenders in accordance with their respective Pro Rata Share of Commitments of such Class.

Section 2.09 Repayment of Loans.

(a) The Borrower shall repay to the Administrative Agent (i) for the ratable account of the Appropriate Lenders the outstanding principal amount of Revolving Loans on the Revolving Commitment Termination Date and (ii) the then unpaid amount of each Protective Advance on the earliest of (A) the Revolving Commitment Termination Date or, if applicable, the Latest Maturity Date, and (B) 45 days (or such longer period as may be consented to by the Administrative Agent) after such Protective Advance is made; **provided** that on each date that a Revolving Loan is made while any Protective Advance is outstanding, the Borrower shall repay all Protective Advances with the proceeds of such Revolving Loan.

(b) The Borrower shall repay to the Swing Line Lender (or, to the extent required by **Section 2.03(c)**, to the Administrative Agent for the account of the Revolving Lenders) each Swing Line Loan made by the Swing Line Lender on the earlier to occur of (i) the date seven (7) Business Days after such Swing Line Loan is made and (ii) the Maturity Date of the Revolving Loans; **provided**, on each date that a Revolving Loan is made, the Borrower shall repay all Swing Line Loans then outstanding. At any time there shall exist a Defaulting Lender that is a Revolving Lender, immediately upon the request of the Swing Line Lender, the Borrower shall repay the outstanding Swing Line Loans made by the Swing Line Lender to the Borrower in an amount sufficient to eliminate any Fronting Exposure in respect of the Swing Line Loans.

Section 2.10 Interest.

(a) Subject to the provisions of **Section 2.10(b)**, (i) each Term Benchmark Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate *per annum* equal to the applicable Term Benchmark for such Interest Period *plus* the Applicable Rate, (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable Borrowing date at a rate *per annum* equal to the Base Rate *plus* the Applicable Rate, and (iii) each Swing Line Loan and each Protective Advance shall bear interest on the outstanding principal amount thereof from the applicable Borrowing date at a rate *per annum* equal to the Base Rate *plus* the Applicable Rate.

(b) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate *per annum* at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(c) If any amount (other than principal of any Loan) payable by the Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code or any other Debtor Relief Law, automatically and without further action by the Administrative Agent or any Lender) such amount shall thereafter bear interest at a fluctuating interest rate *per annum* at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(d) Accrued and unpaid interest on the principal amount of all outstanding past due Obligations (including interest on past due interest) shall be due and payable upon demand (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code or any other Debtor Relief Law, automatically and without further action by the Administrative Agent or any Lender).

(e) Interest on each Loan shall be due and payable (i) with respect to Base Rate Loans, in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein and (ii) with respect to Term Benchmark Loans, on each Interest Payment Date, and, in any event, every three months. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any case or proceeding under the Bankruptcy Code or any other Debtor Relief Law.

(f) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for any Term Benchmark Loans upon determination of such interest rate. The determination of Term Benchmark by the Administrative Agent shall be conclusive in the absence of manifest error. At any time when Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the “prime rate” used in determining the Base Rate promptly following the public announcement of such change.

(g) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than ten (10) Interest Periods in effect unless otherwise agreed between the Borrower and the Administrative Agent; **provided** that after the establishment of any new Class of Loans pursuant to an Extension, the number of Interest Periods otherwise permitted by this **Section 2.10(g)** shall increase by three Interest Periods for each applicable Class so established.

Section 2.11 Fees.

(a) The Borrower shall pay to the Agents such fees as shall have been separately agreed upon in writing (including pursuant to any fee letter executed with the Agents in connection with the Facilities) in the amounts and at the times so specified. Such fees shall be fully earned when due and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the applicable Agent).

(b) The Borrower agrees to pay to Lenders having Revolving Exposure:

(i) commitment fees for the period from and including the Closing Date to and including the Revolving Commitment Termination Date equal to (A) the daily difference between (1) the Revolving Commitments and (2) the sum of (I) the aggregate principal amount of all outstanding Revolving Loans *plus* (II) the Letter of Credit Usage, *times* (B) the Applicable Commitment Fee; and

(ii) letter of credit fees with respect to all Letters of Credit (other than trade Letters of Credit) (the "**L/C Fee**") equal to the (A) Applicable Rate for Revolving Loans that are Term Benchmark Loans (or, with respect to trade Letters of Credit, 50% of the Applicable Rate for Revolving Loans that are Term Benchmark Loans), *times* (B) the maximum amount available to be drawn under all Letters of Credit (regardless of whether any conditions for drawing could then be met and determined as of the close of business on any date of determination and whether or not such maximum amount is then in effect under such Letter of Credit if such maximum amount increases periodically pursuant to the terms of such Letter of Credit).

All fees referred to in this **Section 2.11(b)** shall be paid to the Administrative Agent at the Administrative Agent's Office and upon receipt, the Administrative Agent shall promptly distribute to each Lender its Pro Rata Share thereof. In addition, for purposes of calculating the commitment fees referred to in **clause (b)(i)** only, no portion of the Revolving Commitments shall be deemed utilized as a result of outstanding Swing Line Loans.

(c) The Borrower agrees to pay directly to the applicable Issuing Bank, for its own account, the following fees:

(i) a fronting fee to be agreed by the Borrower and the applicable Issuing Bank (not to exceed 0.125% *per annum*) *times* the maximum Dollar Amount then available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit if such maximum amount increases periodically pursuant to the terms of such Letter of Credit) determined as of the close of business on any date of determination; and

(ii) such documentary and processing charges for any issuance, amendment, transfer or payment of a Letter of Credit as are in accordance with such Issuing Bank's standard schedule for such charges and as in effect at the time of such issuance, amendment, transfer or payment, as the case may be, which fees, costs and charges shall be payable to such Issuing Bank within three Business Days after its demand therefor and are nonrefundable.

Each payment of fees required above under this **clause (c)** on any Letters of Credit, whether denominated in Dollars or an Alternative Currency, shall be made in Dollars.

(d) All fees referred to in **Sections 2.11(b)** and **2.11(c)(i)** shall be payable quarterly in arrears on the first day following the last day of each calendar quarter of each year during the Revolving Commitment Period, commencing with the first day following the first full calendar quarter ending after the Closing Date, and on the Revolving Commitment Termination Date; *provided* that any such fees accruing after the Revolving Commitment Termination Date shall be payable on demand.

(e) The Borrower agrees to pay to the Administrative Agent for its own account the fees payable in the amounts and at the times separately agreed upon.

Section 2.12 Computation of Interest and Fees. All computations of interest for Base Rate Loans calculated by reference to the "prime rate" or Federal Funds Rate shall be made on the basis of a year of 365 days or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided* that any Loan that is repaid on the same day on which it is made shall, subject to **Section 2.10(a)**, bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.13 Evidence of Indebtedness.

(a) The Borrowings made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent, acting solely for purposes of Treasury Regulation Section 5f.103-1(c) or Proposed Treasury Regulation Section 1.163-5(b) (or, in each case, any amended or successor version), as non-fiduciary agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be prima facie evidence absent manifest error of the amount of the Borrowings made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the entries in the Register, the entries in the Register shall control in the absence of manifest error.

(b) Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note payable to such Lender, which shall evidence the relevant Class of such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(c) Entries made in good faith by the Administrative Agent in the Register pursuant to **Section 2.13(a)**, and by each Lender in its account or accounts pursuant to **Section 2.13(a)**, shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error; provided that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement and the other Loan Documents.

Section 2.14 Payments Generally.

(a) All payments to be made by the Borrower shall be made on the date when due, in immediately available funds without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office for payment and in Same Day Funds not later than 1:00 p.m. (New York City time, in the case of any payment in Dollars, or London time, in the case of any payment in an Alternative Currency) on the date specified herein. If, for any reason, the Borrower is prohibited by any Law from making any required payment hereunder in an Alternative Currency, the Borrower shall make such payment in Dollars in the Dollar Amount of the Alternative Currency payment amount. The Administrative Agent will promptly distribute to each Appropriate Lender its Pro Rata Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office; **provided** that the proceeds of any borrowing of Revolving Loans to finance the reimbursement of a drawn Letter of Credit as provided in **Section 2.04(c)** shall be remitted by the Administrative Agent to the applicable Issuing Bank. All payments received by the Administrative Agent after 1:00 p.m. (New York City time, in the case of any payment in Dollars, or London time, in the case of any payment in an Alternative Currency) shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. At all times during which a Cash Dominion Period exists, solely for purposes of determining the Total Utilization of Revolving Commitments, checks and cash or other immediately available funds from collections of items of payment and proceeds of any Collateral shall be applied in whole or in part against the Obligations, on the day of receipt, subject to actual collection.

(b) If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(c) Unless the Borrower has notified the Administrative Agent, prior to the date any payment is required to be made by it to the Administrative Agent hereunder for the account of any Lender or any Issuing Bank, as applicable, that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to such Lender or such Issuing Bank. If and to the extent that such payment was not in fact made to the Administrative Agent in Same Day Funds, then such Lender or such Issuing Bank, as applicable, shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender or such Issuing Bank in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender or such Issuing Bank, as applicable, to the date such amount is repaid to the Administrative Agent in Same Day Funds at the applicable Overnight Rate from time to time in effect. A notice of the Administrative Agent to any Lender with respect to any amount owing under this **subsection (c)** shall be conclusive, absent manifest error.

(d) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this **Article II**, and such funds are not made available to the Borrower by the Administrative Agent because the applicable conditions to the Borrowing set forth in **Article IV** are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(e) The obligations of the Lenders hereunder to make Loans, to fund participations in Letters of Credit, Swing Line Loans and Protective Advances and to make payments pursuant to **Section 10.07** are several and not joint. The failure of any Lender to make any Loan on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or purchase its participation.

(f) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(g) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in **Section 9.03**. If the Administrative Agent receives funds for application to the Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent may, but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender's Pro Rata Share of such of the outstanding Loans or other Obligations then owing to such Lender. Notwithstanding anything to the contrary, to the extent the Administrative Agent receives a payment or other amount after the date such payment or other amount is due, the Administrative Agent, in its sole discretion, may distribute such payment or other amount to the relevant Lender of record (or other Person of record entitled to

such payment) as of the date such payment or other amount is received by the Administrative Agent.

(h) If any Lender shall fail to make any payment required to be made by it pursuant to **Section 2.03(c), 2.04(c), 2.06, 2.15** or **10.07**, then the Administrative Agent may, in its discretion and notwithstanding any contrary provision hereof, (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender for the benefit of the Administrative Agent, the Swing Line Lender or the Issuing Banks, as applicable, to satisfy such Lender's obligations to the Administrative Agent, the Swing Line Lender and the Issuing Banks until all such unsatisfied obligations are fully paid and/or (ii) hold any such amounts in a segregated account as cash collateral for, and application to, any future funding obligations of such Lender under any such Section, in the case of each of **clauses (i) and (ii)** above, in any order as determined by the Administrative Agent in its discretion.

(i) If a payment is made by the Administrative Agent (or its Affiliates) in error (whether known to the recipient or not) or if a Lender or another recipient of funds is not otherwise entitled to receive such funds under the provisions of this agreement at such time, in such amount or from the Administrative Agent (or its Affiliates) (as determined by the Administrative Agent in its sole discretion), then such Lender or recipient shall forthwith on demand repay to the Administrative Agent the portion of such payment that was made in error (or otherwise not intended to be received) (as determined by the Administrative Agent in its sole discretion) in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent (or its Affiliate) to such Lender or recipient to the date such amount is repaid to the Administrative Agent (or its Affiliate) in Same Day Funds at the applicable Overnight Rate from time to time in effect. Each Lender and other Person party hereto waives any claim of discharge for value or any other claim of entitlement to any portion of a payment that the Administrative Agent, in its sole discretion, determines was made in error.

Section 2.15 Sharing of Payments, Etc. If, other than as expressly provided elsewhere herein, any Lender shall obtain payment in respect of any principal of or interest on account of the Loans of a particular Class made by it (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (a) notify the Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the Loans made by them and/or such subparticipations in the participations in L/C obligations, Swing Line Loans or Protective Advances held by them, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment in respect of such Loans or such participations, as the case may be, pro rata with each of them; **provided** that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in **Section 11.06** (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each relevant Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. The provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms

of this Agreement as in effect from time to time (including **Section 11.07**), (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant permitted hereunder or (C) any payment received by such Lender not in its capacity as a Lender. The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of setoff, but subject to **Section 11.09**) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this **Section 2.15** and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this **Section 2.15** shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

Section 2.16 Incremental Borrowings.

(a) **Notice.** At any time and from time to time, on one or more occasions, the Borrower may, by notice to the Administrative Agent, increase the aggregate principal amount of the Revolving Commitments (the “**Incremental Revolving Facilities**” and the revolving loans and other extensions of credit made thereunder, the “**Incremental Revolving Loans**”; each such increase, an “**Incremental Facility**” and the loans or other extensions of credit made thereunder, the “**Incremental Loans**”).

(b) **Ranking.** Incremental Facilities will rank *pari passu* in right of payment with the Revolving Commitments and will be secured by the Collateral by Liens on a *pari passu* basis to the Liens that secure the Revolving Commitments.

(c) **Size and Currency.** The aggregate principal amount of Incremental Facilities on any date commitments with respect thereto are first received, assuming such commitments are fully drawn only on the date of receipt thereof, will not exceed, an amount equal to, the Incremental Amount. Each Incremental Facility will be in an integral multiple of \$1,000,000 and in an aggregate principal amount that is not less than \$5,000,000 (or such lesser minimum amount approved by the Administrative Agent in its reasonable discretion); **provided** that such amount may be less than such minimum amount or integral multiple amount if such amount represents all the remaining availability under the Incremental Amount at such time. Any Incremental Facility shall be denominated in Dollars but may be borrowed in Alternative Currencies in accordance with the terms of the Revolving Facility.

(d) **Incremental Lenders.** Incremental Facilities may be provided by any existing Lender (it being understood that no existing Lender shall have an obligation to make, or provide commitments with respect to, an Incremental Loan) or by any Additional Lender. While existing Lenders may (but are not obligated to unless invited to and so elect) participate in any syndication of an Incremental Facility and may (but are not obligated to unless invited to and so elect) become lenders with respect thereto, the existing Lenders will not have any right to participate in any syndication of, and will not have any right of first refusal or other right to provide all or any portion of, any Incremental Facility or Incremental Loan except to the extent the Borrower and the

arrangers thereof, if any, in their discretion, choose to invite or include any such existing Lender (which may or may not apply to all existing Lenders and may or may not be pro rata among existing Lenders). Final allocations in respect of Incremental Facilities will be made by the Borrower together with the arrangers thereof, if any, in their discretion, on the terms permitted by this **Section 2.16**; *provided* that the lenders providing the Incremental Facilities will be reasonably acceptable to the (i) Borrower, (ii) the Administrative Agent, (iii) each Issuing Bank and (iv) the Swing Line Lender (except that, in the case of **clauses (ii), (iii) and (iv)** only to the extent such Person otherwise would have a consent right to an assignment of such loans or commitments to such lender, such consent not to be unreasonably withheld, conditioned or delayed).

(e) **Incremental Facility Amendments; Use of Proceeds.** Each Incremental Facility will become effective pursuant to an amendment (each, an “**Incremental Amendment**”) to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower and each Person providing such Incremental Facility and the Administrative Agent. Incremental Amendments may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary, advisable or appropriate, in the reasonable opinion of the Borrower in consultation with the Administrative Agent, to effect the provisions of this **Section 2.16**. The Administrative Agent will promptly notify each Lender as to the effectiveness of each Incremental Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Amendment, this Agreement and the other Loan Documents, as applicable, will be amended to the extent necessary to reflect the existence and terms of the Incremental Facility and the Incremental Loans evidenced thereby. This **Section 2.16** shall supersede any provisions in **Section 2.15** or **11.01** to the contrary. The Borrower may use the proceeds of the Incremental Loans for any purpose not prohibited by this Agreement.

(f) **Conditions.** The availability of Incremental Facilities under this Agreement will be subject solely to the following conditions, subject, for the avoidance of doubt, to any condition expressly set forth in **Section 1.08**, and measured on the date of the receipt of commitments under (assuming such commitments are fully drawn only on the date of receipt) such Incremental Facility:

(i) no Event of Default shall have occurred and be continuing or would result therefrom; *provided* that the condition set forth in this **clause (i)** may be waived or not required (other than with respect to Specified Events of Default) by the Persons providing such Incremental Facilities if the proceeds of the initial Borrowings under such Incremental Facilities will be used to finance, in whole or in part, any Permitted Investment or other Acquisition Transaction;

(ii) the representations and warranties in the Loan Documents will be true and correct in all material respects (except for representations and warranties that are already qualified by materiality, which representations and warranties will be true and correct in all respects) immediately prior to, and after giving effect to, the incurrence of such Incremental Facility; *provided* that the condition set forth in this **clause (ii)** may be waived or not required (other than with respect to (A) the Specified Representations and (B) the representation and warranty contained in **Section 5.20**) by the Persons providing such Incremental Facilities if the proceeds of the initial Borrowings under such Incremental Facilities will be used to finance, in whole or in part, a Permitted Investment; and

(iii) if the Additional Lenders providing such Incremental Facility require such information as a condition to providing such Incremental Facility, the Lenders shall have received at least three Business Days prior to the closing date of such Incremental Facility all documentation and other information about the Loan Parties reasonably requested in writing by them at least ten Business Days prior to the closing date of such Incremental Facility required under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act.

(g) **Terms.** Each Incremental Amendment will set forth the amount and terms of the relevant Incremental Facility. Each Incremental Facility will be documented as an increase to the Revolving Commitments and shall be on terms identical to those applicable to the Revolving Facility except with respect to any commitment, arrangement, upfront or similar fees that may be agreed to among the Borrower and the lenders providing such Incremental Revolving Facility.

(h) [Reserved].

(i) **Adjustments to Revolving Loans.** Upon each increase in the Revolving Commitments pursuant to this **Section 2.16**, unless an Event of Default shall have occurred and be continuing,

(i) each Revolving Lender immediately prior to such increase will automatically and without further act be deemed to have assigned to each lender providing a portion of such increase (each an “**Incremental Revolving Facility Lender**”), and each such Incremental Revolving Facility Lender will automatically and without further act be deemed to have assumed, a portion of such Revolving Lender’s participations hereunder in outstanding Letters of Credit, Swing Line Loans and Protective Advances such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the aggregate outstanding (1) participations hereunder in Letters of Credit, (2) participations hereunder in Swing Line Loans and (3) participations hereunder in Protective Advances, in each case held by each Revolving Lender will equal the percentage of the aggregate Revolving Commitments of all Lenders represented by such Revolving Lender’s Revolving Commitments; and

(ii) if, on the date of such increase, there are any Revolving Loans outstanding, such Revolving Loans shall on or prior to the effectiveness of such Incremental Revolving Facility be prepaid from the proceeds of Incremental Revolving Loans made hereunder (reflecting such increase in Revolving Commitments), which prepayment shall be accompanied by accrued interest on the Revolving Loans being prepaid and any costs incurred by any Revolving Lender in accordance with **Section 3.05**.

Section 2.17 [Reserved].

Section 2.18 Extensions of Loans.

(a) **Extension Offers.** Pursuant to one or more offers (each, an “**Extension Offer**”) made from time to time by the Borrower to all Lenders holding Loans and/or Commitments of a particular Class with a like Maturity Date, the Borrower may extend such Maturity Date and otherwise modify the terms of such Loans and/or Commitments pursuant to the terms set forth in an Extension Offer (each, an “**Extension**”). Each Extension Offer will specify the minimum

amount of Loans and/or Commitments with respect to which an Extension Offer may be accepted, which (x) with respect to Loans and/or Commitments denominated in Dollars, will be an integral multiple of \$1,000,000 and an aggregate principal amount that is not less than \$5,000,000, (y) [reserved] or (z) with respect to Loans and/or Commitments denominated in any Alternative Currency, will be an integral multiple of the Dollar Amount of \$1,000,000 and an aggregate principal amount that is not less than the Dollar Amount of \$5,000,000 or, in each case, if less, (i) the aggregate principal amount of such Class of Loans outstanding or (ii) such lesser minimum amount as is approved by the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed. Extension Offers will be made on a *pro rata* basis to all Lenders holding Loans and/or Commitments of a particular Class with a like Maturity Date. If the aggregate outstanding principal amount of such Loans (calculated on the face amount thereof) and/or Commitments in respect of which Lenders have accepted an Extension Offer exceeds the maximum aggregate principal amount of Loans and/or Commitments offered to be extended pursuant to such Extension Offer, then the Loans and/or Commitments of such Lenders will be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Lenders have accepted such Extension Offer. There is no requirement that any Extension Offer or Extension Amendment (defined as follows) be subject to any “most favored nation” pricing provisions. The terms of an Extension Offer shall be determined by the Borrower, and Extension Offers may contain one or more conditions to their effectiveness as determined by the Borrower, including a condition that a minimum amount of Loans and/or Commitments of any or all applicable tranches be tendered.

(b) **Extension Amendments.** The Lenders hereby irrevocably authorize the Administrative Agent to enter into amendments to this Agreement and the other Loan Documents (an “*Extension Amendment*”) as may be necessary, advisable or appropriate in order to establish new tranches in respect of Extended Loans and Extended Commitments and such amendments as permitted by **clause (c)** below as may be necessary, advisable or appropriate in the reasonable opinion of the Borrower, in consultation with the Administrative Agent, in connection with the establishment of such new tranches of Loans or Commitments. This **Section 2.18** shall supersede any provisions in **Section 2.15** or **11.01** to the contrary. Except as otherwise set forth in an Extension Offer, there will be no conditions to the effectiveness of an Extension Amendment. Extensions will not constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement.

(c) **Terms of Extension Offers and Extension Amendments.** The terms of any Extended Loans and Extended Commitments will be set forth in an Extension Offer and as agreed between the Borrower and the Extending Lenders accepting such Extension Offer; *provided* that:

(i) the final maturity date of such Extended Loans and Extended Commitments will be no earlier than the Latest Maturity Date applicable to the Loans and/or Commitments subject to such Extension Offer;

(ii) [reserved];

(iii) [reserved]; and

(iv) except as to (x) maturity, interest, fees (including any commitment, arrangement, upfront or similar fees) and (y) other terms applicable after the Latest Maturity Date of the Loans that are not Extended Revolving Loans, all terms of any Extended Revolving Loans or Extended Revolving Commitments shall be on terms and pursuant to documentation applicable to the Revolving Facility.

Any Extended Loans will constitute a separate tranche of Revolving Loans from the Revolving Loans held by Lenders that did not accept the applicable Extension Offer.

(d) **Extension of Revolving Commitments.** In the case of any Extension of Revolving Commitments and/or Revolving Loans, the following shall apply:

(i) all borrowings and all prepayments of Revolving Loans shall continue to be made on a ratable basis among all Revolving Lenders, based on the relative amounts of their Revolving Commitments, until the repayment of the Revolving Loans attributable to the non-extended Revolving Commitments on the relevant Maturity Date;

(ii) the allocation of the participation exposure with respect to any then-existing or subsequently issued or made Letter of Credit, Swing Line Loan or Protective Advance as between the Revolving Commitments of such extended tranche and the remaining non-extended Revolving Commitments shall be made on a ratable basis in accordance with the relative amounts thereof until the Maturity Date relating to such non-extended Revolving Commitments has occurred, it being understood that the obligations of any Issuing Bank or Swing Line Lender may not be extended beyond the Maturity Date relating to the non-extended Revolving Commitments pursuant to this **Section 2.18** without the consent of such Issuing Bank or Swing Line Lender;

(iii) no termination of extended Revolving Commitments and no repayment of extended Revolving Loans accompanied by a corresponding permanent reduction in extended Revolving Commitments shall be permitted unless such termination or repayment (and corresponding reduction) is accompanied by at least a *pro rata* termination or permanent repayment (and corresponding *pro rata* permanent reduction), as applicable, of each other tranche of Revolving Loans and Revolving Commitments (or each other tranche of Revolving Commitments and Revolving Loans shall have otherwise been terminated and repaid in full);

(iv) at no time shall there be more than five different tranches of Revolving Commitments.

If the Total Utilization of Revolving Commitments exceeds the Line Cap as a result of the occurrence of the Maturity Date with respect to any tranche of Revolving Commitments while an extended tranche of Revolving Commitments remains outstanding, the Borrower shall make such payments as are necessary in order to eliminate such excess on such Maturity Date.

(e) **Required Consents.** No consent of any Lender or any other Person will be required to effectuate any Extension, other than the consent of the Administrative Agent (such consent not to be unreasonably withheld, delayed or conditioned), the Borrower and the applicable Extending Lender. The transactions contemplated by this **Section 2.18** (including, for the

avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Loans on such terms as may be set forth in the relevant Extension Offer) will not require the consent of any other Lender or any other Person, and the requirements of any provision of this Agreement or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this **Section 2.18** will not apply to any of the transactions effected pursuant to this **Section 2.18**.

Section 2.19 Defaulting Lenders.

(a) **Defaulting Lender Adjustments.** Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) **Defaulting Lender Waterfall.** Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to **Article IX** or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to **Section 11.09** shall be applied at such time or times as may be determined by the Administrative Agent as follows:

first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder;

second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to each Issuing Bank and the Swing Line Lender hereunder;

third, to Cash Collateralize each Issuing Bank's Fronting Exposure with respect to such Defaulting Lender with respect to outstanding Letters of Credit (in an amount equal to 103% (or if not denominated in Dollars, 110%) of the maximum face amount of all outstanding Letters of Credit) or the Swing Line Lender's Fronting Exposure with respect to such Defaulting Lender in accordance with **Section 2.19(d)**;

fourth, as the Borrower may request (so long as no Event of Default shall have occurred and be continuing), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent;

fifth, if so determined by the Administrative Agent and the Borrower, to be held in a Cash Collateral Account and released *pro rata* in order to (A) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (B) Cash Collateralize each Issuing Bank's (in an amount equal to 103% (or if not denominated in Dollars, 110%) of the maximum face amount of all outstanding Letters of Credit) or the Swing Line Lender's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit or Swing Line Loans, as applicable, issued under this Agreement, in accordance with **Section 2.19(d)**;

sixth, to the payment of any amounts owing to the Lenders, the Issuing Banks or the Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any Issuing Bank or the Swing Line Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement;

seventh, so long as no Event of Default shall have occurred and be continuing, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and

eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction;

provided that if

(1) such payment is a payment of the principal amount of any Loans or Reimbursement Obligations in respect of which such Defaulting Lender has not fully funded its appropriate share, and

(2) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in **Section 4.02** were satisfied or waived, such payment shall be applied solely to pay the Loans of, and Reimbursement Obligations owed to,

all Non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of, or Reimbursement Obligations owed to, such Defaulting Lender until such time as all Loans funded and unfunded participations in Letters of Credit, Swing Line Loans and Protective Advances are held by the Lenders pro rata in accordance with the applicable Commitments without giving effect to **Section 2.19(a)(iii)**. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this **Section 2.19(a)(i)** shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(ii) **Certain Fees.**

(a) No Defaulting Lender shall be entitled to receive any fee pursuant to **Section 2.11(b)** for any period during which that Lender is a Defaulting Lender; *provided* such Defaulting Lender shall be entitled to receive fees pursuant to **Section 2.11(b)(ii)** for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Pro Rata Share of the Stated Amount of Letters of Credit for which it has provided Cash Collateral pursuant to **Section 2.04**.

(b) With respect to any fees not required to be paid to any Defaulting Lender pursuant to **clause (A)** above, the Borrower shall

(i) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letters of Credit, Swing Line Loans and Protective Advances that has been reallocated to such Non-Defaulting Lender pursuant to **clause (iii)** below,

(ii) pay to each Issuing Bank the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Bank's Fronting Exposure to such Defaulting Lender, and

(iii) not be required to pay the remaining amount of any such fee.

(iii) **Reallocation of Participations to Reduce Fronting Exposure.** All or any part of such Defaulting Lender's participation in Letters of Credit, Swing Line Loans and Protective Advances shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Pro Rata Shares (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that

(a) the conditions set forth in **Section 4.02** are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and

(b) such reallocation does not cause the aggregate Revolving Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment.

Subject to **Section 11.25**, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(iv) **Cash Collateral.** If the reallocation described in **clause (iii)** above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, provide Cash Collateral pursuant to the requirements set forth in **Section 2.19(d)**.

(b) **Defaulting Lender Cure.** If the Borrower, the Administrative Agent and the Swing Line Lender and each Issuing Bank agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit, Swing Line Loans and Protective Advances to be held pro rata by the Lenders in accordance with the applicable Commitments (without giving effect to **Section 2.04**) whereupon such Lender will cease to be a Defaulting Lender; **provided** that no adjustments will be made retroactively with respect to fees accrued or payments made by or on

behalf of the Borrower, while that Lender was a Defaulting Lender; *provided, further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

(c) **New Swing Line Loans/Letters of Credit.** So long as any Revolving Lender is a Defaulting Lender, (i) the Swing Line Lender shall not be required to fund any Swing Line Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swing Line Loan and (ii) no Issuing Bank shall be required to issue, extend or amend any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

(d) **Cash Collateral.** At any time that there shall exist a Defaulting Lender and **Section 2.19(a)(iv)** is applicable, within one Business Day following the written request of the Administrative Agent, any Issuing Bank (with a copy to the Administrative Agent) or the Swing Line Lender (with a copy to the Administrative Agent), the Borrower shall Cash Collateralize the applicable Issuing Bank's Fronting Exposure, the Swing Line Lender's Fronting Exposure and any outstanding Protective Advance, as the case may be, with respect to such Defaulting Lender (determined after giving effect to **Section 2.04** and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(i) **Grant of Security Interest.** The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of the Issuing Banks and the Lenders (including the Swing Line Lender), and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lender's obligation to fund participations in respect of Letters of Credit, Swing Line Loans and Protective Advances, to be applied pursuant to **clause (ii)** below. If at any time the Administrative Agent determines that the Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent, the Issuing Banks or the Lenders as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(ii) **Application.** Notwithstanding anything to the contrary contained in this Agreement,

(a) Cash Collateral provided under this **Section 2.19** in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of Letters of Credit (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein,

(b) Cash Collateral provided under this **Section 2.19** in respect of Swing Line Loans shall be applied to the satisfaction of the Defaulting Lender's obligations to fund participations in respect of Swing Line Loans (including, as to

Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein and

(c) Cash Collateral provided under this **Section 2.19** in respect of Protective Advances shall be applied to the satisfaction of the Defaulting Lender's obligations to fund participations in respect of Protective Advances (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(iii) **Termination of Requirement.** Cash Collateral (or the appropriate portion thereof) provided to reduce any Issuing Bank's or the Swing Line Lender's Fronting Exposure or applied to any such Defaulting Lender's obligations to fund participations in respect of Protective Advances shall no longer be required to be held as Cash Collateral pursuant to this **Section 2.19** following

(a) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender),

(b) (I) the repayment in full of all Protective Advances by the Borrower or (II) the payment by such Defaulting Lender of its obligations to fund participations in respect of Protective Advances (including at the time of the termination of Defaulting Lender status of the applicable Lender) or

(c) the determination by the Administrative Agent, the applicable Issuing Bank or the Swing Line Lender, as the case may be, that there exists excess Cash Collateral;

provided that, subject to the other provisions of this **Section 2.19**, the Person providing Cash Collateral and the applicable Issuing Bank, the Swing Line Lender or, with respect to Protective Advances, the Administrative Agent, as the case may be, may agree that the Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations (including obligations to fund Protective Advances); **provided further** that to the extent that such Cash Collateral was provided by the Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to the Loan Documents.

Section 2.20 [Reserved].

Section 2.21 Judgment Currency.

(a) If, for the purpose of obtaining judgment in any court, it is necessary to convert a sum owing hereunder or under any other Loan Document in one currency into another currency, each party hereto and each Loan Party (and by its acceptance of its appointment in such capacity, each Lead Arranger) agrees, to the fullest extent that it may effectively do so, that the rate of exchange used shall be that at which, in accordance with normal banking procedures in the relevant jurisdiction, the first currency could be purchased with such other currency on the Business Day immediately preceding the day on which final judgment is given.

(b) The obligations of the Loan Parties in respect of any sum due to any party hereto or under any other Loan Document or any holder of the obligations owing hereunder or under any other Loan Document (the “**Applicable Creditor**”) shall, notwithstanding any judgment in a currency (the “**Judgment Currency**”) other than the currency in which such sum is stated to be due hereunder (the “**Agreement Currency**”), be discharged only to the extent that, on the Business Day following receipt by the Applicable Creditor of any sum adjudged to be so due in the Judgment Currency, the Applicable Creditor may in accordance with normal banking procedures in the relevant jurisdiction purchase the Agreement Currency with the Judgment Currency; if the amount of the Agreement Currency so purchased is less than the sum originally due to the Applicable Creditor in the Agreement Currency, the Borrower and each other Loan Party as a separate obligation and notwithstanding any such judgment, agrees to indemnify the Applicable Creditor against such loss. The obligations of the Loan Parties contained in this Section shall survive the termination of this Agreement and the payment of all other amounts owing hereunder.

Section 2.22 Reserves; Changes to Eligibility Criteria.

The Administrative Agent may at any time and from time to time and only in the exercise of its Permitted Discretion establish new categories of Reserves or change eligibility criteria set forth in the definition of “**Eligible Account**”, “**Eligible Inventory**” and/or “**Qualified Cash**” upon five Business Days’ prior written notice to the Borrower (which notice shall not be required at any time an Event of Default has occurred and is continuing), which notice shall include a reasonably detailed description of such new category of Reserve being established or change to any eligibility criteria set forth in the definition of “**Eligible Account**” “**Eligible Inventory**” and/or “**Qualified Cash**” (during which five Business Day period (x) the Administrative Agent shall, if requested, discuss any such Reserve or change with the Borrower and (y) the Borrower may take such action as may be required so that the event, condition or matter that is the basis for such Reserve or change thereto no longer exists or exists in a manner that would result in the establishment of a lower Reserve or result in a lesser change thereto, in a manner and to the extent reasonably satisfactory to the Administrative Agent), establish and increase or decrease Reserves in accordance with the terms hereof; **provided** that, pending the expiration of such five Business Day period, no Borrowings may be made if such Borrowings would result in the Total Utilization of Revolving Commitments to exceed the Line Cap, calculated as if such proposed Reserve had been implemented; **provided, further**, that any Designated Hedging Reserve or Designated Cash Management Reserve shall not require such five Business Day prior notice and shall be effectively immediately upon written notice to the Borrower.

Notwithstanding any other provision of this Agreement to the contrary,

(a) the establishment or increase of any Reserves or changes in any eligibility criteria shall be limited to such Reserves and changes as the Administrative Agent determines, in its Permitted Discretion, are appropriate based on the analysis of facts or events first occurring or first discovered by the Administrative Agent after the Closing Date or that differ materially from facts or events occurring and known to the Administrative Agent on the Closing Date,

(b) in no event shall Reserves or changes in eligibility criteria with respect to any component of the Borrowing Base duplicate any other Reserves currently established or maintained or eligibility criteria to the extent addressed thereby, and

(c) the amount of any such Reserve or change in eligibility criteria shall be a reasonable quantification of the incremental dilution of the Borrowing Base attributable to the relevant contributing factors and have a reasonable relationship to the event, condition or other matter that is the basis for such Reserve or change.

Section 2.23 Currency Equivalents.

(a) The Administrative Agent shall determine the Dollar Amount of each Loan denominated in an Alternative Currency and Letter of Credit Obligation in respect of Letters of Credit denominated in an Alternative Currency (i) for Loans, as of the first day of each Interest Period applicable thereof, and (ii) for Letters of Credit, as of the end of each fiscal quarter of the Borrower, and in each case shall promptly notify the Borrower of each Dollar Amount so determined by it. Each such calculation shall be on the basis of the Spot Rate (as defined below) for the purchase of such currency with Dollars. For purposes of this **Section 2.23**, the “*Spot Rate*” for a currency means the rate determined by the Administrative Agent to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date of such determination; *provided* that the Administrative Agent may obtain such spot rate from another financial institution designated by the Administrative Agent if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency.

(b) If after giving effect to any such determination of a Dollar Amount, the sum of the aggregate outstanding amount of the Revolving Loans denominated in Alternative Currencies and the Letter of Credit Obligations denominated in Alternative Currencies exceeds the aggregate Dollar Amount of Revolving Commitments then in effect, the Borrower shall, within five Business Days of receipt of notice thereof from the Administrative Agent setting forth such calculation in reasonable detail, prepay the applicable Revolving Loans denominated in Alternative Currencies under the Revolving Facility or take other action as the Administrative Agent, in its discretion, may direct (including to Cash Collateralize the applicable Letter of Credit Obligations) to the extent necessary to eliminate any such excess.

ARTICLE III.

TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY

Section 3.01 Taxes.

(a) Except as required by applicable Law, any and all payments by the Borrower or any Guarantor to or for the account of any Agent, any Lender or Issuing Bank under any Loan Document shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges imposed by any Governmental Authority, and all liabilities (including additions to tax, penalties and interest) with respect thereto (“*Taxes*”). The following shall be “*Excluded Taxes*”: in the case of each Agent, each Lender and Issuing Bank,

(i) Taxes imposed on or measured by net income (however denominated, and including branch profits and similar Taxes), and franchise or similar Taxes, in each case,

that are (A) imposed by the jurisdiction (or political subdivision thereof) under the laws of which it is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, or (B) Other Connection Taxes;

(ii) any U.S. federal Tax that is (or would be) required to be withheld with respect to amounts payable hereunder in respect of an Eligible Assignee (pursuant to an assignment under **Section 10.07**) on the date it becomes an assignee to the extent such Tax is in excess of the Tax that would have been applicable had such assigning Lender not assigned its interest arising under any Loan Document (unless such assignment is at the express written request of the Borrower);

(iii) U.S. federal withholding Taxes imposed on amounts payable to or for the account of a Lender, Agent or Issuing Bank with respect to an applicable interest in a Loan or Commitment pursuant to a Law in effect on the date on which

(a) such Lender, Agent or Issuing Bank acquires such interest in the applicable Commitment or, to the extent a Lender acquires an interest in a Loan not funded pursuant to a prior Commitment, acquires such interest in such Loan (other than pursuant to an assignment request by the Borrower under **Section 3.07**) or

(b) such Lender, changes its Lending Office (other than at the written request of the Borrower to change such Lending Office), except in each case to the extent that pursuant to **Section 3.01**, amounts with respect to such Taxes were payable to such Lender's, Agent's or Issuing Bank's assignor immediately before such Lender, Agent or Issuing Bank became a party hereto, or to such Lender immediately before it changed its Lending Office;

(iv) any Taxes imposed as a result of the failure of any Agent, Lender or Issuing Bank to comply with the provisions of **Sections 3.01(b), 3.01(c) and 3.01(d)** (in the case of any Foreign Lender, as defined below) or the provisions of **Section 3.01(e)** (in the case of any U.S. Lender, as defined below);

(v) [reserved] and

(vi) any withholding Taxes imposed under FATCA.

If the Borrower, a Guarantor or other applicable Withholding Agent is required to withhold or deduct any Taxes or Other Taxes (as defined below) from or in respect of any sum payable under any Loan Document to any Agent, any Lender or Issuing Bank,

(i) except in the case of Excluded Taxes, the sum payable shall be increased as necessary so that after making all required withholding or deductions (including withholding or deductions applicable to additional sums payable under this **Section 3.01(a)**), each of such Agent, such Lender or Issuing Bank receives an amount equal to the sum it would have received had no such withholding or deductions been made,

(ii) the applicable Withholding Agent shall make such withholding or deductions,

(iii) the applicable Withholding Agent shall pay the full amount withheld or deducted to the relevant taxing authority, and

(iv) within thirty days after the date of such payment by the Borrower or any Guarantor (or, if receipts or evidence are not available within thirty days, as soon as practicable thereafter), the Borrower or applicable Guarantor shall furnish to such Agent, Lender or Issuing Bank (as the case may be) the original or a facsimile copy of a receipt evidencing payment thereof to the extent such a receipt has been made available to the Borrower or applicable Guarantor (or other evidence of payment reasonably satisfactory to the Administrative Agent).

If the Borrower or applicable Guarantor fails to pay any Taxes or Other Taxes when due to the appropriate taxing authority then the Borrower or applicable Guarantor shall indemnify such Agent, such Lender and such Issuing Bank for any incremental Taxes that may become payable by such Agent, such Lender or such Issuing Bank arising out of such failure.

(b) To the extent it is legally able to do so, each Agent, Lender or Issuing Bank (including an Eligible Assignee to which a Lender assigns its interest in accordance with **Section 11.07**, unless such Eligible Assignee is already a Lender hereunder) that is not a “**United States person**” within the meaning of Section 7701(a)(30) of the Code (each, a “**Foreign Lender**”) agrees to complete and deliver to the Borrower and the Administrative Agent on or prior to the date on which the Foreign Lender becomes a party hereto (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two (2) accurate, complete and signed copies of whichever of the following is applicable:

(i) IRS Form W-8BEN or Form W-8BEN-E certifying that it is entitled to benefits under an income tax treaty to which the United States is a party;

(ii) IRS Form W-8ECI certifying that the income receivable pursuant to any Loan Document is effectively connected with the conduct of a trade or business in the United States;

(iii) if the Foreign Lender is not (A) a bank described in Section 881(c)(3)(A) of the Code, (B) a 10-percent shareholder of the Borrower described in Section 871(h)(3)(B) of the Code, or (C) a controlled foreign corporation related to the Borrower within the meaning of Section 864(d) of the Code, a certificate to that effect in substantially the form attached hereto as **Exhibit G** (a “**Non-Bank Certificate**”) and an IRS Form W-8BEN or Form W-8BEN-E, certifying that the Foreign Lender is not a United States person;

(iv) to the extent a Foreign Lender is not the beneficial owner for U.S. federal income tax purposes, an IRS Form W-8IMY (or any successor forms) of the Foreign Lender, accompanied by, and to the extent applicable, an IRS Form W-8BEN, Form W-8BEN-E, Form W-8ECI, Non-Bank Certificate, Form W-9, Form W-8IMY (or other successor forms) and any other required supporting information from each beneficial owner (it being understood that a Foreign Lender need not provide certificates or supporting documentation from beneficial owners if (A) the Foreign Lender is a “qualified intermediary” or “withholding foreign partnership” for U.S. federal income tax purposes

and (B) such Foreign Lender is as a result able to establish, and does establish, that payments to such Foreign Lender are, to the extent applicable, entitled to an exemption from or, if an exemption is not available, a reduction in the rate of, U.S. federal withholding Taxes without providing such certificates or supporting documentation); or

(v) any other form prescribed by applicable requirements of U.S. federal income tax law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable requirements of law to permit the Borrower and the Administrative Agent to determine the withholding or deduction required to be made.

(c) In addition, each such Foreign Lender shall, to the extent it is legally entitled to do so,

(i) promptly submit to the Borrower and the Administrative Agent two (2) accurate, complete and signed copies of such other or additional forms or certificates (or such successor forms or certificates as shall be adopted from time to time by the relevant taxing authorities) as may then be applicable or available to secure an exemption from or reduction in the rate of U.S. federal withholding Tax (1) on or before the date that such Foreign Lender's most recently delivered form, certificate or other evidence expires or becomes obsolete or inaccurate in any material respect, (2) after the occurrence of a change in the Foreign Lender's circumstances requiring a change in the most recent form, certificate or evidence previously delivered by it to the Borrower and the Administrative Agent, and (3) from time to time thereafter if reasonably requested by the Borrower or the Administrative Agent, and

(ii) promptly notify the Borrower and the Administrative Agent of any change in the Foreign Lender's circumstances that would modify or render invalid any claimed exemption or reduction. This **Section 3.01(c)** shall not apply to any reporting requirements under FATCA.

(d) If a payment made to a Lender under any Loan Document would be subject to Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by Law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine whether such Foreign Lender has complied with such Foreign Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this **Section 3.01(d)**, "**FATCA**" shall include any amendments made to FATCA after the date of this Agreement.

(e) Each Agent, Lender or Issuing Bank that is a "**United States person**" (within the meaning of Section 7701(a)(30) of the Code) (each, a "**U.S. Lender**") agrees to complete and

deliver to the Borrower and the Administrative Agent two (2) copies of accurate, complete and signed IRS Form W-9 or successor form certifying that such U.S. Lender is not subject to U.S. federal backup withholding Tax

(i) on or prior to the Closing Date (or on or prior to the date it becomes a party to this Agreement),

(ii) on or before the date that such form expires or becomes obsolete or inaccurate in any material respect,

(iii) after the occurrence of a change in the U.S. Lender's circumstances requiring a change in the most recent form previously delivered by it to the Borrower and the Administrative Agent, and

(iv) from time to time thereafter if reasonably requested by the Borrower or the Administrative Agent.

(f) The Borrower agrees to pay, without duplication of its obligations under **Section 3.01(a)**, any and all present or future stamp, court or documentary Taxes and any other excise (in the nature of a documentary or similar Tax), property, intangible, filing or mortgage recording Taxes or charges or similar levies imposed by any Governmental Authority that arise from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document (including additions to Tax, penalties and interest related thereto) excluding, in each case, such amounts that are Other Connection Taxes imposed in connection with an Assignment and Assumption, grant of a participation, transfer or assignment to or designation of a new applicable Lending Office or other office for receiving payments under any Loan Document, except to the extent that any such change is requested in writing by the Borrower (all such non-excluded Taxes described in this **Section 3.01(f)** being hereinafter referred to as "**Other Taxes**").

(g) If any Taxes or Other Taxes are directly asserted against any Agent, Lender or Issuing Bank with respect to any payment received by such Agent or Lender in respect of any Loan Document, such Agent, Lender or Issuing Bank may pay such Taxes or Other Taxes and, without duplication of its obligations under **Section 3.01(a)**, the Borrower will promptly indemnify and hold harmless such Agent, Lender or Issuing Bank for the full amount of such Taxes (other than Excluded Taxes) and Other Taxes (and any Taxes (other than Excluded Taxes) and Other Taxes imposed on amounts payable under this **Section 3.01**), and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally imposed or asserted. Payments under this **Section 3.01(g)** shall be made within ten days after the date the Borrower receives written demand for payment from such Agent, Lender or Issuing Bank.

(h) Except as provided in **Section 11.07(e)**, a Participant shall not be entitled to receive any greater payment under this **Section 3.01** than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant.

(i) If any Agent, any Lender or Issuing Bank determines, in its sole discretion, exercised in good faith, that it has received a refund in respect of any Taxes or Other Taxes as to which it has

been indemnified by the Borrower or any Guarantor, as the case may be, or with respect to which the Borrower or any Guarantor, as the case may be, has paid additional amounts pursuant to this **Section 3.01**, it shall promptly pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower or any Guarantor under this **Section 3.01** with respect to the Taxes or Other Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses (including Taxes) incurred by such Agent, such Lender or Issuing Bank and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), *provided* that the Borrower or applicable Guarantor, as the case may be, upon the request of such Agent, such Lender or Issuing Bank, agrees to repay the amount paid over to the Borrower or applicable Guarantor, as the case may be (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) to such Agent, such Lender or Issuing Bank in the event such Agent, such Lender or Issuing Bank is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this **paragraph (i)**, in no event will such Agent, Lender or Issuing Bank be required to pay any amount to the Borrower or applicable Guarantor pursuant to this **paragraph (i)** the payment of which would place such Agent, Lender or Issuing Bank in a less favorable net after-Tax position than the indemnified party would have been in if the Tax or Other Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax or Other Tax had never been paid. Such Agent, such Lender or Issuing Bank, as the case may be, shall provide the Borrower upon request with a copy of any notice of assessment or other evidence reasonably available of the requirement to repay such refund received from the relevant Governmental Authority (*provided* that such Lender, such Agent or Issuing Bank may delete any information therein that such Lender, such Agent or Issuing Bank deems confidential or not relevant to such refund in its reasonable discretion). This subsection shall not be construed to require any Agent, any Lender or Issuing Bank to make available its tax returns (or any other information relating to its Taxes that it reasonably deems confidential) to the Borrower, any Guarantor or any other Person.

(j) Each Lender agrees that, upon the occurrence of any event giving rise to the operation of **Section 3.01(a)** or **(g)** with respect to such Lender, it will, if requested by the Borrower in writing, use commercially reasonable efforts (subject to legal and regulatory restrictions) to mitigate the effect of any such event, including by designating another Lending Office for any Loan affected by such event and by completing and delivering or filing any Tax-related forms that such Lender is legally able to deliver and that would reduce or eliminate any amount of Taxes or Other Taxes required to be deducted or withheld or paid by the Borrower; *provided* that such efforts are made at the Borrower's expense and are on terms that, in the reasonable judgment of such Lender, do not cause such Lender or any of its Lending Offices to suffer any economic, legal or regulatory disadvantage, and *provided further* that nothing in this **Section 3.01(j)** shall affect or postpone any of the Obligations of the Borrower or the rights of such Lender pursuant to **Section 3.01(a)** or **(g)**.

(k) Notwithstanding any other provision of this Agreement, the Borrower and the Administrative Agent may deduct and withhold any Taxes required by any Laws (including, for the avoidance of doubt, FATCA) to be deducted and withheld from any payment under any of the Loan Documents, subject to the provisions of this **Section 3.01**.

(l) Each Agent or Lender, as applicable, shall severally indemnify the Administrative Agent, within ten days after demand therefor, for

(i) any Taxes attributable to such Agent or Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Taxes and without limiting the obligation of the Borrower to do so),

(ii) any Taxes attributable to such Lender's failure to comply with the provisions of **Section 11.07(e)** relating to the maintenance of a Participant Register and

(iii) any Excluded Taxes attributable to such Agent or Lender,

in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Agent or Lender by the Administrative Agent shall be conclusive absent manifest error. Each Agent and Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Agent or Lender under any Loan Document or otherwise payable by the Administrative Agent to such Agent or Lender from any other source against any amount due to the Administrative Agent under this **Section 3.01(l)**.

(m) Each Lender authorizes the Administrative Agent to deliver to the Borrower and to any successor Administrative Agent any documentation provided by the Lender to the Administrative Agent pursuant to paragraph (b), (c), (d), or (e) of this **Section 3.01**.

(n) The agreements in this **Section 3.01** shall survive the resignation or replacement of the Administrative Agent, termination of this Agreement and the payment of the Loans and all other amounts payable hereunder and any assignment of rights by, or replacement of, any Lender.

Section 3.02 Illegality. If any Lender reasonably determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to Term Benchmark, or to determine or charge interest rates based upon the Term Benchmark, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars or any Alternative Currency in the London interbank market or any other applicable offshore interbank market, as applicable, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue Term Benchmark Loans or to convert Base Rate Loans to Term Benchmark Loans, shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Adjusted Term SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Adjusted Term SOFR component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice,

(A) with respect to Borrowings denominated in Dollars, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Term Benchmark Loans and shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Term Benchmark Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Adjusted Term SOFR component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Term Benchmark Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Term Benchmark Loans and

(B) with respect to Borrowings denominated in an Alternative Currency, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of such Term Benchmark Loans and shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Term Benchmark Loans of such Lender to a Loan bearing interest at an alternative rate mutually acceptable to the Borrower and the applicable Lenders, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Term Benchmark Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Term Benchmark Loans; *provided, however*, that if the Borrower and the applicable Lenders cannot agree within a reasonable time on an alternative rate for such Loans, the Borrower may, at its discretion, either (x) prepay such Loans or (y) maintain such Loans outstanding, in which case, the interest rate payable to the applicable Lender on such Loans will be the rate determined by the Administrative Agent as its cost of funds to fund a Borrowing of such Loans with maturities comparable to the Interest Period applicable thereto plus the Applicable Rate or

(C) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Adjusted Term SOFR component of the Base Rate with respect to any Base Rate Loans, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Adjusted Term SOFR component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon Adjusted Term SOFR.

Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

Section 3.03 Inability to Determine Rates. If the Administrative Agent or the Required Lenders reasonably determine that for any reason in connection with any request for a Term Benchmark Loan or a conversion to or continuation thereof that (a) deposits are not being offered to banks in the relevant market for the applicable amount and Interest Period of such Term Benchmark Loan, (b) adequate and reasonable means do not exist for determining the Term Benchmark for any requested Interest Period with respect to a proposed Term Benchmark Loan or in connection with an existing or proposed Base Rate Loan or (c) the Term Benchmark for any requested Interest Period with respect to a proposed Term Benchmark Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will

promptly so notify the Borrower and each Lender. Thereafter, (i) the obligation of the Lenders to make or maintain such Term Benchmark Loans shall be suspended, and (ii) in the event of a determination described in the preceding sentence with respect to the Adjusted Term SOFR component of the Base Rate, the utilization of the Adjusted Term SOFR component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, (i) with respect to Borrowings denominated in Dollars, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Term Benchmark Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein or (ii) with respect to Borrowings denominated in an Alternative Currency, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Term Benchmark Loans and shall convert all such Term Benchmark Loans of such Lender to a Loan bearing interest at an alternative rate mutually acceptable to the Borrower and the applicable Lenders; **provided however**, that if the Borrower and the applicable Lenders cannot agree within a reasonable time on an alternative rate for such Loans, the Borrower may, at its discretion, either (A) prepay such Loans or (B) maintain such Loans outstanding, in which case, the interest rate payable to the applicable Lender on such Loans will be the rate determined by the Administrative Agent as its cost of funds to fund a Borrowing of such Loans with maturities comparable to the Interest Period applicable thereto *plus* the Applicable Rate.

Notwithstanding the foregoing, if the Administrative Agent has made the determination described in **clause (a)** or **(b)** of the foregoing paragraph, the Administrative Agent, in consultation with the Borrower, may establish an alternative interest rate for such Loans, in which case, such alternative rate of interest shall apply with respect to such Loans until (i) the Administrative Agent revokes the notice delivered with respect to such Loans under **clauses (a)** or **(b)** of the first sentence of the foregoing paragraph, (ii) the Administrative Agent or the Required Lenders notify the Administrative Agent and the Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans or (iii) any Lender determines that any law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof.

Section 3.04 Increased Cost and Reduced Return; Capital Adequacy.

(a) **Increased Costs Generally.** If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender, any Issuing Bank or the Swing Line Lender;

(ii) subject any Lender or Agent, any Issuing Bank or the Swing Line Lender to any Tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any Loans or Commitments made by it, or change the

basis of taxation of payments to such Lender, Agent, Issuing Bank, or Swing Line Lender, as applicable, in respect thereof (except, in each case, for (A) Taxes with respect to which the Borrower is obligated to pay additional amounts or indemnity payments pursuant to **Section 3.01**, (B) any Taxes and other amounts described in **clauses (ii)** through **(iv)** of the second sentence of **Section 3.01(a)** that are imposed with respect to payments to or for the account of any Agent, any Lender, any Issuing Bank or the Swing Line Lender under any Loan Document, (C) Connection Income Taxes, and (D) Other Taxes); or

(iii) impose on any Lender, any Issuing Bank or the Swing Line Lender or any other applicable offshore interbank market any other condition, cost or expense affecting this Agreement, any Letter of Credit, any participation in a Letter of Credit or Term Benchmark Loans (other than with respect to Taxes) made by such Lender or any Issuing Bank or the Swing Line Lender that is not otherwise accounted for in the definition of the “**Term Benchmark**” or this **clause (a)**;

and the result of any of the foregoing shall be to increase the cost to such Lender, such Issuing Bank, the Agent or the Swing Line Lender of making or maintaining any Loan the interest on which is determined by reference to Term Benchmark or, in the case of a Change in Law with respect to Taxes, making or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender or Agent (whether of principal, interest, or any other amount), or to increase the cost to such Lender, such Issuing Bank, the Agent or such other Lender of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit, or to reduce the amount of any sum received or receivable by such Lender, the Agent or such Issuing Bank (whether of principal, interest or any other amount)), then, from time to time within ten days after demand by such Lender or such Issuing Bank setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent) (*provided* that such calculation will not in any way require disclosure of confidential or price-sensitive information or any other information the disclosure of which is prohibited by law), the Borrower will pay to such Lender or such Issuing Bank such additional amount or amounts as will compensate such Lender or such Issuing Bank for such additional costs incurred or reduction suffered. No Lender, Issuing Bank or Swing Line Lender shall request that the Borrower pay any additional amount pursuant to this **Section 3.04(a)** unless it shall concurrently make similar requests to other borrowers similarly situated and affected by such Change in Law and from whom such Lender, Issuing Bank or Swing Line Lender is entitled to seek similar amounts.

(b) **Capital Requirements.** If any Lender or any Issuing Bank reasonably determines that any Change in Law affecting such Lender or such Issuing Bank or any Lending Office of such Lender or such Issuing Bank or such Lender’s or Issuing Bank’s holding company, if any, regarding liquidity or capital requirements has or would have the effect of reducing the rate of return on such Lender’s or Issuing Bank’s capital or on the capital of such Lender’s or Issuing Bank’s holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or such Issuing Bank or the Loans made by or Letters of Credit issued by it to a level below that which such Lender or such Issuing Bank or such Lender’s or Issuing Bank’s holding company could have achieved but for such Change in Law (taking into consideration such Lender’s or such Issuing Bank’s policies and the policies of such Lender’s or Issuing Bank’s holding company with respect to liquidity or capital adequacy), then from time to time upon demand of such Lender or

such Issuing Bank setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such demand to the Administrative Agent) (*provided* that such calculation will not in any way require disclosure of confidential or price-sensitive information or any other information the disclosure of which is prohibited by law), the Borrower will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender, such Issuing Bank or such Lender's or Issuing Bank's holding company for any such reduction suffered.

(c) **Certificates for Reimbursement.** A certificate of a Lender or an Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or such Issuing Bank or their respective holding company, as the case may be, as specified in **subsection (a)** or **(b)** of this **Section 3.04** and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender, as the case may be, the amount shown as due on any such certificate within ten days after receipt thereof.

(d) **Delay in Requests.** Failure or delay on the part of any Lender or any Issuing Bank to demand compensation pursuant to the foregoing provisions of this **Section 3.04** shall not constitute a waiver of such Lender's or such Issuing Bank's right to demand such compensation, *provided* that the Borrower shall not be required to compensate a Lender or an Issuing Bank pursuant to the foregoing provisions of this **Section 3.04** for any increased costs incurred or reductions suffered more than one hundred and eighty days prior to the date that such Lender or such Issuing Bank notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such Issuing Bank's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

(e) [Reserved].

Section 3.05 Funding Losses. Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, which demand shall set forth in reasonable detail the basis for requesting such amount (*provided* that such calculation will not in any way require disclosure of confidential or price-sensitive information or any other information the disclosure of which is prohibited by law), the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost, liability or expense (excluding loss of anticipated profits or margin) actually incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day prior to the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or

(c) any assignment of a Term Benchmark Loan on a day prior to the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to **Section 3.07**;

including any loss or expense (excluding loss of anticipated profits or margin) actually incurred by reason of the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. Notwithstanding the foregoing, no Lender may make any demand under this **Section 3.05 (i)** with respect to the Floor or (ii) in connection with any prepayment of interest on Loans.

Section 3.06 Matters Applicable to All Requests for Compensation.

(a) **Designation of a Different Lending Office.** If any Lender requests compensation under **Section 3.04**, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 3.01**, or if any Lender gives a notice pursuant to **Section 3.02**, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to **Section 3.01** or **3.04**, as the case may be, in the future, or eliminate the need for the notice pursuant to **Section 3.02**, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material economic, legal or regulatory respect.

(b) **Suspension of Lender Obligations.** If any Lender requests compensation by the Borrower or under **Section 3.04**, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue Term Benchmark Loans from one Interest Period to another Interest Period, or to convert Base Rate Loans into Term Benchmark Loans, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of **Section 3.06(c)** shall be applicable); *provided* that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(c) **Conversion of Term Benchmark Loans.** If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in **Section 3.02**, **3.03** or **3.04** hereof that gave rise to the conversion of such Lender's Term Benchmark Loans no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Term Benchmark Loans made by other Lenders are outstanding, such Lender's Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Term Benchmark Loans, to the extent necessary so that, after giving effect thereto, all Loans of a given Class held by the Lenders of such Class holding Term Benchmark Loans and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Pro Rata Shares.

Section 3.07 Replacement of Lenders Under Certain Circumstances

If (i) any Lender requests compensation under **Section 3.04** or ceases to make Term Benchmark Loans as a result of any condition described in **Section 3.02** or **Section 3.04**, (ii) the Borrower is required to pay any Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 3.01** and such Lender has declined or is unable to designate a different Lending Office in accordance with **Section 3.01(i)**, (iii) any Lender is a Non-Consenting Lender, (iv) any Lender does not accept an Extension Offer, (v) (A)

any Lender shall become and continue to be a Defaulting Lender and (B) such Defaulting Lender shall fail to cure the default pursuant to **Section 2.19(b)** within five Business Days after the Borrower's request that it cure such default or (vi) any other circumstance exists hereunder that gives the Borrower the right to replace a Lender (other than a Disqualified Lender) as a party hereto, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, **Section 11.07**), all of its interests, rights and obligations under this Agreement and the related Loan Documents (other than its existing rights to payments pursuant to **Section 3.01** or **Section 3.04**) to one or more Eligible Assignees that shall assume such obligations (any of which assignee may be another Lender, if a Lender accepts such assignment), *provided* that:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee specified in **Section 11.07(b)(iv)**;

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in Letters of Credit, Swing Line Loans and Protective Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts payable under **Section 3.05**) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) such Lender being replaced pursuant to this **Section 3.07** shall (i) execute and deliver an Assignment and Assumption with respect to such Lender's Commitment and outstanding Loans and participations in Letters of Credit, Swing Line Loans and Protective Advances, and (ii) deliver any Notes evidencing such Loans to the Borrower or Administrative Agent (or a lost or destroyed note indemnity in lieu thereof); *provided* that the failure of any such Lender to execute an Assignment and Assumption or deliver such Notes shall not render such sale and purchase (and the corresponding assignment) invalid and such assignment shall be recorded in the Register and the Notes shall be deemed to be canceled upon such failure;

(d) the Eligible Assignee shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender;

(e) in the case of any such assignment resulting from a claim for compensation under **Section 3.04** or payments required to be made pursuant to **Section 3.01**, such assignment will result in a reduction in such compensation or payments thereafter;

(f) in the case of any such assignment resulting from a Lender being a Non-Consenting Lender or failing to accept an Extension Offer, the Eligible Assignee shall consent, at the time of such assignment, to each matter in respect of which such Lender being replaced was a Non-Consenting Lender or accept such Extension Offer, as the case may be; and

(g) such assignment does not conflict with applicable Laws.

Notwithstanding anything to the contrary contained above, any Lender that acts as an Issuing Bank may not be replaced hereunder at any time that it has any Letter of Credit outstanding hereunder unless arrangements reasonably satisfactory to such Issuing Bank (including the furnishing of a back-up standby letter of credit in form and substance, and issued by an issuer reasonably satisfactory to such Issuing Bank or the depositing of cash collateral into a cash collateral account in amounts and pursuant to arrangements reasonably satisfactory to such Issuing Bank) have been made with respect to each such outstanding Letter of Credit and the Lender that acts as the Administrative Agent may not be replaced hereunder except in accordance with the terms of **Section 10.09**.

In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of each Lender, all affected Lenders or all the Lenders or all affected Lenders with respect to a certain Class or Classes of the Loans and (iii) the Required Lenders or Required Facility Lenders, as applicable, have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a “*Non-Consenting Lender*.”

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 3.08 Survival. All of the Borrower’s obligations under this **Article III** shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder and resignation of the Administrative Agent or the Collateral Agent.

ARTICLE IV. CONDITIONS PRECEDENT TO BORROWINGS

Section 4.01 Conditions to Initial Borrowing.

The obligation of each Lender to extend credit to the Borrower and of each Issuing Bank to issue Letters of Credit hereunder on the Closing Date is subject only to the satisfaction, or waiver in accordance with **Section 11.01** of each of the following conditions precedent, except as otherwise agreed between the Borrower and the Required Lenders:

(a) The Administrative Agent’s receipt of the following, each of which may be originals, facsimiles or copies in .pdf format unless otherwise specified:

(i) a Committed Loan Notice duly executed by the Borrower delivered as set forth in **Section 2.01(b)**, which (if delivered prior to the Closing Date) shall be deemed to be conditioned on the consummation of the Transactions;

(ii) this Agreement duly executed by each Loan Party;

(iii) the Guaranty and the Security Agreement, in each case, duly executed by each applicable Loan Party;

(iv) delivery to the Collateral Agent or the Term Loan Agent (as bailee for the Collateral Agent pursuant to the terms of the Closing Date ABL Intercreditor Agreement) of certificates, if any, representing the Pledged Equity of the Borrower and the Restricted Subsidiaries that constitute Collateral, in each case, (A) to the extent the issuer of such certificate is a corporation or has “opted into” Article 8 of the UCC and (B) accompanied by undated stock powers executed in blank and evidence that all other actions required under the terms of the Security Agreement to perfect the security interests created by the Security Agreement have been taken except as specified in **Section 6.15** hereof and the Security Agreement; *provided, however*, that, each of the foregoing requirements, including the delivery of documents and instruments required pursuant to the terms of the Collateral Documents (other than to the extent that a Lien on such Collateral may be perfected (x) by the filing of a financing statement or financing change statement, as applicable, under the Uniform Commercial Code or (y) by the delivery of stock certificates of the Borrower and its Subsidiaries to the Collateral Agent or the Term Loan Agent (as bailee for the Collateral Agent pursuant to the terms of the Closing Date ABL Intercreditor Agreement)), shall not constitute conditions precedent to the Borrowing on the Closing Date after the Borrower’s use of commercially reasonable efforts to provide such items on or prior to the Closing Date if the Borrower agrees to deliver, or cause to be delivered, such documents and instruments, or take or cause to be taken such other actions as may be required to perfect such security interests within ninety (90) days after the Closing Date (subject to extensions approved by the Administrative Agent in its reasonable discretion or as provided in **Section 6.15**);

(v) (A) certificates of good standing, or its equivalent, from the secretary of state or other applicable office of the jurisdiction of organization or formation of the Borrower and each other Loan Party if applicable in the relevant jurisdiction, (B) resolutions or other applicable action of the Borrower and each other Loan Party and (C) an incumbency certificate and/or other certificate of Responsible Officers of the Borrower and each other Loan Party, evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which it is a party or is to be a party on the Closing Date;

(vi) an opinion from the following special counsel to the Loan Parties (or certain of the Loan Parties): Gibson, Dunn & Crutcher LLP, with respect to matters of New York and certain aspects of Delaware law and California law;

(vii) a certificate from the chief financial officer or other officer with equivalent duties of the Borrower as to the Solvency (after giving effect to the Transactions on the Closing Date) of the Borrower substantially in the form attached hereto as **Exhibit I**; and

(viii) a certificate from a Responsible Officer of the Borrower certifying as to the satisfaction of the conditions in **clauses (f), (g) and (h)** below;

(b) all fees and expenses required to be paid hereunder on the Closing Date and, with respect to expenses and legal fees, to the extent invoiced in reasonable detail at least two Business Days before the Closing Date (except as otherwise reasonably agreed to by the Borrower) shall

have been paid in full, it being agreed that such fees and expenses may be paid with the proceeds of the initial funding of one or more of the Facilities.

(c) the (i) Term Loan Documents and (ii) the Loan Documents required to be executed on the Closing Date shall have been duly executed and delivered by each Loan Party thereto.

(d) the Lenders shall have received at least three Business Days prior to the Closing Date (i) all documentation and other information about the Loan Parties required under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act and (ii) to the extent the Borrower qualifies as a “legal entity customer” a Beneficial Ownership Certification, that in each case has been requested in writing at least ten Business Days prior to the Closing Date.

(e) confirmation from the Borrower (in the form of an officer’s certificate) that prior to or substantially simultaneously with the initial Borrowing on the Closing Date, the Closing Date Refinancing shall have been or will be consummated.

(f) on the Closing Date, no Default or Event of Default shall exist, or would result from the proposed Borrowing or from the application of the proceeds therefrom on the Closing Date.

(g) since February 1, 2020, there has been no event or circumstance, either individually or in the aggregate, that has resulted in, or is reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect;

(h) the representations and warranties of the Loan Parties contained in **Article V** or any other Loan Document shall be true and correct in all material respects on and as of the Closing Date; *provided* that to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; *provided further* that any representation and warranty that is qualified as to “materiality,” “*Material Adverse Effect*” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates;

(i) the Lead Arrangers shall have received the Annual Financial Statements; *provided* that the Lead Arrangers hereby acknowledge receipt of the foregoing Annual Financial Statements; and

(j) the Borrower shall have delivered a Borrowing Base Certificate to the Administrative Agent which calculates the Borrowing Base as of January 30, 2021; *provided* that Administrative Agent hereby acknowledges receipt of the borrowing base certificate delivered by Petco Animal Supplies, Inc. under the Existing ABL Credit Agreement, which delivery satisfies the condition in this clause (j).

Without limiting the generality of the provisions of the last paragraph of **Section 11.03**, for purposes of determining compliance with the conditions specified in this **Section 4.01**, each Lender that has signed this Agreement or funded Loans hereunder shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required under this **Section 4.01** to be consented to or approved by or acceptable or satisfactory

to a Lender, unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 4.02 Conditions to All Borrowings After the Closing Date. Except as set forth in Section 2.16(f) with respect to Incremental Loans and subject to Section 1.08, the obligation of each Lender to honor a Committed Loan Notice, of each Issuing Bank to issue, amend, renew or extend any Letter of Credit and of the Swing Line Lender to make Swing Line Loans, in each case, after the Closing Date, is subject to the following conditions precedent:

(a) The representations and warranties of the Borrower and each other Loan Party contained in Article V or any other Loan Document shall be true and correct in all material respects on and as of the date of such Borrowing or issuance, amendment, renewal or extension of any Letter of Credit; *provided* that, to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; *provided, further*, that any representation and warranty that is qualified as to “materiality,” “*Material Adverse Effect*” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

(b) As of the date of such Borrowing or the date of any issuance, amendment, renewal or extension of any Letter of Credit, no Default or Event of Default shall have occurred and be continuing on such date (immediately prior to giving effect to the extensions of credit requested to be made) or would result after giving effect to the extensions of credit requested to be made on such date.

(c) As of the date of such Borrowing and after giving effect thereto, the Total Utilization of Revolving Commitments shall not exceed the Line Cap.

(d) If applicable, the Administrative Agent shall have received a Committed Loan Notice in accordance with the requirements hereof and, if applicable, the applicable Issuing Bank shall have received an Issuance Notice in accordance with the requirements hereof or the Swing Line Lender shall have received a Swing Line Loan Request in accordance with the requirements hereof.

(e) For purposes of this Section 4.02, the representations and warranties contained in Section 5.05(a) shall be deemed to refer to the most recent financial statements furnished pursuant to Sections 6.01(a) and (b), respectively.

Subject to Section 1.08(f), each Committed Loan Notice (other than a Committed Loan Notice requesting only a conversion of Loans to another Type or a continuation of Term Benchmark Loans) and each Issuance Notice submitted by the Borrower shall be deemed to be a representation and warranty that the condition specified in Sections 4.02(a), (b) and (c) has been satisfied on and as of the date of the applicable Borrowing or issuance, amendment, renewal or extension of a Letter of Credit.

Without limiting the generality of the provisions of the last paragraph of Section 11.02, for purposes of determining compliance with the conditions specified in this Section 4.02, each Lender that has signed this Agreement (and/or Assignment and Assumption) shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter

required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the date of the proposed borrowing, specifying its objection thereto in writing.

ARTICLE V. REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants each of the following to the Lenders, the Issuing Banks, the Administrative Agent and the Collateral Agent, in each case, to the extent and, unless otherwise specifically agreed by the Borrower, only on the dates required by **Section 2.16**, or **Article IV**, as applicable.

Section 5.01 Existence, Qualification and Power; Compliance with Laws. Each Loan Party and each Restricted Subsidiary that is a Material Subsidiary,

- (a) is duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization (to the extent such concepts exist in such jurisdiction);
- (b) has all corporate or other organizational power and authority to (i) own its assets and carry on its business as currently conducted and (ii) in the case of the Loan Parties, execute, deliver and perform its obligations under the Loan Documents to which it is a party and consummate the Transactions;
- (c) is duly qualified and in good standing (to the extent such concepts exist in such jurisdiction) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification;
- (d) is in compliance with all applicable Laws; and
- (e) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted;

except in each case referred to in **clauses (c), (d) or (e)**, to the extent that failure to do so has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.02 Authorization; No Contravention.

- (a) The execution, delivery and performance by each Loan Party of each Loan Document to which it is a party has been duly authorized by all necessary corporate or other organizational action.
- (b) None of the execution, delivery or performance by each Loan Party of each Loan Document to which it is a party nor the consummation of the Transactions will,
 - (i) contravene the terms of any of its Organization Documents;

(ii) result in any breach or contravention of, or the creation of any Lien (other than a Permitted Lien) upon any assets of such Loan Party or any Restricted Subsidiary, under (A) any Contractual Obligation relating to Material Indebtedness or (B) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property is subject;

(iii) violate any applicable Law; or

(iv) require any approval of stockholders, members or partners or any approval or consent of any Person under any Contractual Obligation relating to Material Indebtedness, except for such approvals or consents which will be obtained on or before the Closing Date;

except with respect to any breach, contravention or violation (but not creation of Liens) referred to in **clauses (ii), (iii) and (iv)** above, to the extent that such breach, contravention or violation has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.03 Governmental Authorization. No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by any Loan Party of this Agreement or any other Loan Document, except for,

(a) filings necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties;

(b) the approvals, consents, exemptions, authorizations, actions, notices and filings that have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given or made or in full force and effect pursuant to the Collateral Documents); and

(c) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.04 Binding Effect. This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is party hereto and thereto. This Agreement and each other Loan Document constitutes a legal, valid and binding obligation of each Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except as such enforceability may be limited by applicable Debtor Relief Laws and by general principles of equity and principles of good faith and fair dealing.

Section 5.05 Financial Statements; No Material Adverse Effect.

(a) The Annual Financial Statements fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP (as in effect on the Closing Date (or the date of preparation)) consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein.

(b) Since February 1, 2020, there has been no event or circumstance, either individually or in the aggregate, that has resulted in, and is reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

(c) The forecasts of consolidated balance sheets and statements of comprehensive income (loss) of the Borrower and its Subsidiaries which have been furnished to the Administrative Agent prior to the Closing Date, when taken as a whole, have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time made and at the time the forecasts are delivered, it being understood that (i) no forecasts are to be viewed as facts, (ii) any forecasts are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties or any Sponsor, (iii) no assurance can be given that any particular forecasts will be realized and (iv) actual results may differ and such differences may be material.

Section 5.06 Litigation. Except as set forth in **Schedule 5.06**, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, overtly threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of the Restricted Subsidiaries that has resulted in, or is reasonably expected, individually or in the aggregate, to result in Material Adverse Effect.

Section 5.07 [Reserved].

Section 5.08 Ownership of Property; Liens. Each Loan Party and each Restricted Subsidiary has good and valid record title in fee simple to, or valid leasehold interests in, or easements or other limited property interests in, all real property necessary in the ordinary conduct of its business, free and clear of all Liens except for Permitted Liens and except where the failure to have such title or other interest has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect. The properties of each Loan Party and each Restricted Subsidiary are insured with financially sound and reputable insurance companies that are not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or the applicable Restricted Subsidiary operates.

Section 5.09 Environmental Matters.

(a) Except as has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect, (i) the Loan Parties and the Restricted Subsidiaries are in compliance with all applicable Environmental Laws (including having obtained all Environmental Permits) and (ii) none of the Loan Parties or any of the Restricted Subsidiaries is subject to any pending, or to the knowledge of the Loan Parties, threatened Environmental Claim or any other Environmental Liability or is aware of any basis for any Environmental Liability.

(b) None of the Loan Parties or any of the Restricted Subsidiaries has used, released, treated, stored, transported or disposed of Hazardous Materials, at or from any currently or formerly owned or operated real estate or facility relating to its business, in a manner that has resulted in, or is reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.10 Taxes. Except as has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect, the Borrower and its Subsidiaries have (i) timely filed all foreign, U.S. federal and state and other tax returns and reports required to be filed and (ii) timely paid all foreign, U.S. federal and state and other Taxes, assessments, fees and other governmental charges (including satisfying their withholding Tax obligations) levied or imposed on their properties, income or assets or otherwise due and payable, except those which are being contested in good faith by appropriate actions diligently conducted and for which adequate reserves have been provided in accordance with GAAP.

Section 5.11 ERISA Compliance; Pension Plans.

(a) Except as set forth in **Schedule 5.11(a)** or has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state, provincial, territorial and foreign Laws.

(b) Except, as set forth in **Schedule 5.11(b)** or, with respect to each of the below clauses of this **Section 5.11(b)**, as has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in Material Adverse Effect,

(i) no ERISA Event has occurred or is reasonably expected to occur;

(ii) neither the Borrower, nor any Subsidiary Guarantor nor any of their respective ERISA Affiliates has engaged in a transaction that is subject to Sections 4069 or 4212(c) of ERISA; and

(iii) neither the Borrower, nor any Subsidiary Guarantor nor any ERISA Affiliate has been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is insolvent (within the meaning of Section 4245 of ERISA) or has been determined to be in “endangered” or “critical” status (within the meaning of Section 432 of the Code or Section 305 of ERISA) and no such Multiemployer Plan is expected to be insolvent or in endangered or critical status.

Section 5.12 Subsidiaries. As of the Closing Date, all of the outstanding Equity Interests in the Borrower and each Material Subsidiary have been validly issued and are fully paid and (if applicable) non-assessable, and all Equity Interests owned by the Borrower or any Subsidiary Guarantor in any of their respective direct Material Subsidiaries are owned free and clear of all Liens (other than Permitted Liens) of any Person. As of the Closing Date, **Schedule 5.12** (i) sets forth the name and jurisdiction of each Subsidiary, (ii) sets forth the ownership interest of the Borrower and each Subsidiary in each Subsidiary, including the percentage of such ownership and (iii) identifies each Subsidiary that is a Subsidiary the Equity Interests of which are required to be pledged on the Closing Date pursuant to the Collateral Documents.

Section 5.13 Margin Regulations; Investment Company Act.

(a) As of the Closing Date, none of the Collateral is Margin Stock. No Loan Party is engaged nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock (within the meaning of Regulation U issued by the FRB), or

extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Borrowings or issuance of, or drawings under, any Letter of Credit will be used for any purpose that violates Regulation U.

(b) Neither the Borrower nor any Guarantor is an “investment company” under the Investment Company Act of 1940.

Section 5.14 Disclosure. As of the Closing Date, none of the written information and written data heretofore or contemporaneously furnished by or on behalf of any Loan Party or a Sponsor to any Agent or any Lender on or prior to the Closing Date in connection with the Transactions and the negotiation of this Agreement or delivered hereunder or any other Loan Document on or prior to the Closing Date, when taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make such written information and written data taken as a whole, in the light of the circumstances under which it was delivered, not materially misleading (after giving effect to all modifications and supplements to such written information and written data, in each case, furnished after the date on which such written information or such written data was originally delivered and prior to the Closing Date); it being understood that for purposes of this **Section 5.14**, such written information and written data shall not include projections, *pro forma* financial information, financial estimates, forecasts or other forward-looking information or information of a general economic or general industry nature or prepared by the Lead Arrangers.

Section 5.15 Intellectual Property; Licenses, Etc. The Borrower and the Restricted Subsidiaries own or have a valid right to use, all the Intellectual Property necessary for the operation of their respective businesses as currently conducted, except where the failure to have any such rights, has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect. To the knowledge of the Borrower, the operation of the respective businesses of the Borrower and the Restricted Subsidiaries as currently conducted does not infringe upon, misappropriate or violate any Intellectual Property rights held by any Person except for such infringements, misappropriations or violations that have not resulted in, or are not reasonably expected, individually or in the aggregate, to result in, a Material Adverse Effect. No claim or litigation regarding any Intellectual Property owned by the Borrower or any of the Restricted Subsidiaries is pending or, to the knowledge of the Borrower, threatened against the Borrower or any Restricted Subsidiary, that, has resulted in, or is reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.16 Solvency. On the Closing Date after giving effect to the Transactions, the Borrower and its Subsidiaries, on a consolidated basis, are Solvent.

Section 5.17 USA Patriot Act, FCPA and OFAC.

(a) To the extent applicable, each of the Loan Parties and the Restricted Subsidiaries is in compliance, in all material respects, with (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto and (ii) the USA PATRIOT Act and other similar anti-money laundering rules and regulations.

(b) Each of the Loan Parties and the Restricted Subsidiaries, and their respective officers, directors and employees, and to the Borrower's knowledge, their respective agents, affiliates and representatives, have conducted their businesses in compliance in all material respects with the FCPA, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions. The Borrower will not directly, or to its knowledge indirectly, use the proceeds of the Loans or Letters of Credit in violation of the FCPA, the UK Bribery Act 2010 or other similar anti-corruption legislation in other jurisdictions.

(c) None of the Loan Parties or any of the Restricted Subsidiaries, nor, to the knowledge of the Borrower, any director, officer, agent, employee or Affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is, (i) the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets, the Investment Ban List or any other Sanctions list, or (iii) located, organized or resident in a Designated Jurisdiction.

(d) The Borrower will not directly, or to its knowledge indirectly, use the proceeds of the Loans or Letters of Credit or otherwise knowingly make available such proceeds (x) to any Person, for the purpose of financing the activities of any Person that, at the time of such financing, is (i) the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets, the Investment Ban List or any other Sanctions list, or (iii) located, organized or resident in a Designated Jurisdiction or (y) in any manner that would result in a violation of Sanctions by any Person.

Section 5.18 Collateral Documents. Except as otherwise contemplated hereby or under any other Loan Documents, the provisions of the Collateral Documents, together with such filings and other actions required to be taken hereby or by the applicable Collateral Documents or contemplated by the Collateral Documents (including the delivery to Collateral Agent of any Pledged Debt and any Pledged Equity required to be delivered pursuant to the applicable Collateral Documents), are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid and enforceable perfected Lien (subject to Permitted Liens) on all right, title and interest of the Borrower and the applicable Subsidiary Guarantors, respectively, in the Collateral described therein.

Section 5.19 Use of Proceeds. The Borrower has used the proceeds of the Loans (including the Swing Line Loans) and the Letters of Credit issued hereunder only in compliance with (and not in contravention of) applicable Laws and each Loan Document, and not in a manner that would result in a violation of Sanctions by any Person.

Section 5.20 Borrowing Base Certificate. The information set forth in each Borrowing Base Certificate is true and correct in all material respects and has been prepared in all material respects in the accordance with the requirements of this Agreement. The Accounts, Inventory and cash and Cash Equivalents that are identified by the Borrower as Eligible Accounts, Eligible Inventory and Qualified Cash, as applicable, in each Borrowing Base Certificate submitted to the Administrative Agent, as of the date to which such Borrowing Base Certificate relates, comply in all material respects with the criteria (other than any Administrative Agent-discretionary criteria established in accordance with this Agreement) set forth in the definition of "*Eligible Accounts*", "*Eligible Inventory*" and "*Qualified Cash*".

ARTICLE VI.
AFFIRMATIVE COVENANTS

So long as the Termination Conditions have not been satisfied, the Borrower shall, and shall (except in the case of the covenants set forth in **Sections 6.01, 6.02 and 6.03**) cause each of the Restricted Subsidiaries to:

Section 6.01 Financial Statements. Deliver to the Administrative Agent for prompt further distribution by the Administrative Agent to each Lender each of the following:

(a) **Audited Annual Financial Statements.** Within the time period required by the SEC (or, in the event that the Borrower is no longer a public filer with the SEC, within one hundred and twenty (120) days after the end of each fiscal year of the Borrower), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of each fiscal year, and the related consolidated statements of comprehensive income (loss), stockholders' equity and cash flows for such fiscal year together with related notes thereto, setting forth in each case in comparative form the figures for the previous fiscal year (if ending after the Closing Date), prepared in accordance with GAAP, audited and accompanied by a report and opinion of the Borrower's auditor on the Closing Date or any other accounting firm of nationally or regionally recognized standing or another accounting firm reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any explanatory statement as to the Borrower's ability to continue as a "going concern" or like qualification or exception (excluding any "emphasis of matter" paragraph), other than any such statement, qualification or exception resulting from or relating to (i) an actual or anticipated breach of a Financial Covenant, (ii) an upcoming maturity date, (iii) activities, operations, financial results or liabilities of any Person other than the Loan Parties and the Restricted Subsidiaries or (iv) changes in accounting principles or practices.

(b) **Quarterly Financial Statements.** Within the time period required by the SEC (or, in the event that the Borrower is no longer a public filer with the SEC, as soon as available, but in any event within sixty (60) days after the end of each of the first three fiscal quarter of each fiscal year of the Borrower) (i) a condensed consolidated balance sheet of the Borrower and its Subsidiaries as at the end of each of the first three fiscal quarters of each fiscal year, (ii) the related condensed consolidated statements of comprehensive income (loss) for such fiscal quarter and for the portion of the fiscal year then ended and (iii) the related condensed consolidated statement of cash flows for the portion of the fiscal year then ended, setting forth, in each case of **clauses (ii) and (iii)**, in comparative form, the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, in each case if ended after the Closing Date, certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in material compliance with GAAP, subject to year-end adjustments and the absence of footnotes.

(c) **Lender Calls.** The Borrower shall conduct quarterly conference calls with management of the Borrower (which conference calls may be combined with any conference calls for the holders of the Borrower's securities) and the Lenders, and in each case, subject to the requirements of this covenant, to discuss the financial performance of the Borrower and its

Restricted Subsidiaries for the most recently ended fiscal year or fiscal quarter, as the case may be, for which financial statements have been delivered pursuant to **clauses (a)** or **(b)** above.

(d) **Unrestricted Subsidiaries.** Simultaneously with the delivery of each set of consolidated financial statements referred to in **Section 6.01(a)** and **Section 6.01(b)** above, such information (which need not be audited or reviewed by the auditors) reasonably sufficient to identify the Indebtedness and Consolidated Adjusted EBITDA attributable to all Unrestricted Subsidiaries (if any).

Notwithstanding the foregoing, the obligations in **paragraphs (a)** and **(b)** of this **Section 6.01** may be satisfied with respect to financial information of the Borrower and its Subsidiaries by furnishing the Borrower's Form 10-K or 10-Q, as applicable, filed with the SEC; *provided* that, to the extent such information is in lieu of information required to be provided under **Section 6.01(a)**, so long as a report and opinion of the Borrower's auditor is not included therein, such materials are accompanied by a report and opinion of the Borrower's auditor on the Closing Date, any other accounting firm of nationally or regionally recognized standing or another accounting firm reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any explanatory statement as to the Borrower's ability to continue as a "going concern" or like qualification or exception (excluding any "emphasis of matter" paragraph), other than any such statement, qualification or exception resulting from or relating to (i) an actual or anticipated breach of a Financial Covenant, (ii) an upcoming maturity date, (iii) activities, operations, financial results or liabilities of any Person other than the Loan Parties and the Restricted Subsidiaries or (iv) changes in accounting principles or practices. Any financial statements required to be delivered pursuant to this **Section 6.01** shall not be required to contain purchase accounting adjustments to the extent it is not practicable to include any such adjustments in such financial statements.

Section 6.02 Certificates; Other Information. Deliver to the Administrative Agent for prompt further distribution by the Administrative Agent to each Lender each of the following:

(a) **Compliance Certificate.** No later than five Business Days after the delivery of the financial statements referred to in **Section 6.01(a)** and **Section 6.01(b)**, a duly completed Compliance Certificate which will (among other things), with respect to the Compliance Certificate delivered in connection with the Financial Statements referred to in **Section 6.01(a)**, contain a list of Unrestricted Subsidiaries and updates to certain provisions set forth in the Perfection Certificate on the Closing Date; *provided* that, if such Compliance Certificate demonstrates a Financial Covenant Event of Default, a notice of an intent to cure (a "**Notice of Intent to Cure**") pursuant to **Section 8.02** may be delivered along with or prior to delivery of such Compliance Certificate to the extent permitted thereunder.

(b) **SEC Filings.** Promptly after the same are publicly available, copies of all annual, regular, periodic and special reports, proxy statements and registration statements which the Borrower or any Restricted Subsidiary files with the SEC (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statement on Form S-8), and in any case not otherwise required to be delivered to

the Administrative Agent pursuant to any other clause of this **Section 6.02**; *provided* that notwithstanding the foregoing, the obligations in this **Section 6.02(b)** may be satisfied by causing such information to be publicly available on the SEC's EDGAR website or another publicly available reporting service.

(c) **Information Regarding Collateral.** The Borrower agrees to notify the Collateral Agent within forty-five calendar days of such event of any change (or such later date as the Collateral Agent may agree in its reasonable discretion),

(i) in the legal name of any Loan Party or any Person required to be a Loan Party;

(ii) in the identity or type of organization of any Loan Party or any Person required to be a Loan Party;

(iii) in the jurisdiction of organization of any Loan Party or any Person required to be a Loan Party;

(iv) in the location (within the meaning of Section 9-307 of the UCC) of any Loan Party or any Person required to be a Loan Party under the UCC;

(v) in the location of any Collateral that are of a type that are normally used in more than one jurisdiction.

(d) **Other Information.** Such additional information as may be reasonably requested by the Administrative Agent or any Lender through the Administrative Agent (i) for purposes of compliance with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, and the Beneficial Ownership Regulation and (ii) regarding the business, financial, legal or corporate affairs of the Borrower or any of its Restricted Subsidiaries.

(e) [reserved]

(f) **Borrowing Base Certificate.** On or prior to the 15th Business Day after the last day of each fiscal month of the Borrower (which, if such day is not a Business Day, shall be delivered on the following Business Day) commencing with the fiscal month ending February 27, 2021 (the period ending on each such date, a "**Fiscal Month**"), a Borrowing Base Certificate as of the close of business on the last day of the immediately preceding Fiscal Month, together with such supporting information in connection therewith as the Administrative Agent may reasonably request, which may include, (A) a reasonably detailed calculation of Eligible Account, Net Orderly Liquidation Value of Eligible Inventory and Qualified Cash and (B) a reasonably detailed aging of the Loan Parties' Accounts and Inventory; *provided* that

(1) during the continuance of a period beginning on the date that Specified Excess Availability shall have been less than the greater of (x) 10.0% of the Line Cap and (y) \$31,250,000 for five consecutive Business Days and ending on the date that Specified Excess Availability shall have been at least the greater of (x) 10.0% of the Line Cap and (y) \$31,250,000 for 20 consecutive calendar days, the Borrower shall deliver a Borrowing Base Certificate and such supporting information as is reasonably practicable

to provide on a weekly basis by the close of business on Thursday of each week (or if Thursday is not a Business Day, on the next succeeding Business Day), as of the close of business on the immediately preceding Friday,

(2) during the continuance of a Specified ABL Event of Default and only for so long as a Specified ABL Event of Default is continuing, the Borrower will be required to compute the Borrowing Base and deliver a Borrowing Base Certificate as frequently as reasonably requested by the Administrative Agent (but not more frequently than as required in the preceding **clause (1)**),

(3) any Borrowing Base Certificate delivered other than with respect to a Fiscal Month's end may be based on such estimates by the Borrower as the Borrower may deem necessary and

(4) any Borrowing Base Certificate which the Borrower elects to deliver more frequently than with respect to a Fiscal Month's end will be delivered at such increased frequency for at least 60 consecutive calendar days following the initial delivery thereof;

provided, further, that a revised Borrowing Base Certificate based on the Borrowing Base Certificate most recently delivered shall be delivered upon the consummation of a sale or other disposition (or merger, consolidation or amalgamation that constitutes a sale or disposition) of any ABL Priority Collateral of a Loan Party to any Person other than a Loan Party outside the ordinary course of business with an aggregate value in excess of 10% of the Borrowing Base at such time, together with such supporting information as may be reasonably requested by the Administrative Agent.

Documents required to be delivered pursuant to **Section 6.01** or **Section 6.02** (other than **Section 6.02(a)**) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto, on the Borrower's website on the Internet at the website addresses listed on **Schedule 11.02**, or (ii) on which such documents are posted on the Borrower's behalf on Merrill Datasite One, IntraLinks/IntraAgency, Syndtrak or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that: other than with respect to documents that are filed with the SEC, the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Each Lender shall be solely responsible for timely accessing posted documents and maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Lead Arrangers will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on Merrill Datasite One, IntraLinks/IntraAgency, Syndtrak or another similar electronic system (the "**Platform**") and (b) certain of the Lenders may have personnel who do not wish to receive any information with respect to the Borrower or its Subsidiaries, or the respective securities of any of the foregoing, that is not Public-Side Information, and who may be engaged in investment

and other market-related activities with respect to such Person's securities. The Borrower hereby agrees that

(i) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "**PUBLIC**" which, at a minimum, shall mean that the word "**PUBLIC**" shall appear prominently on the first page thereof (and by doing so shall be deemed to have represented that such information contains only Public-Side Information);

(ii) by marking Borrower Materials "**PUBLIC**," the Borrower shall be deemed to have authorized the Administrative Agent, the Lead Arrangers and the Lenders to treat such Borrower Materials as containing only Public-Side Information (*provided however*, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in **Section 11.08**);

(iii) all Borrower Materials marked "**PUBLIC**" are permitted to be made available through a portion of the Platform designated "**Public-Side Information**"; and

(iv) the Administrative Agent and/or the Lead Arrangers shall be entitled to treat any Borrower Materials that are not marked "**PUBLIC**" as being suitable only for posting on a portion of the Platform not designated "**Public-Side Information**."

For the avoidance of doubt, the foregoing shall be subject to the provisions of **Section 11.08**.

Section 6.03 Notices. Promptly after a Responsible Officer obtains actual knowledge thereof, notify the Administrative Agent for prompt further notification by the Administrative Agent to each Lender of:

(a) the occurrence of any (i) Default or Event of Default or (ii) "**Default**" or "**Event of Default**" under and as defined in the Term Loan Credit Agreement; and

(b) (i) any dispute, litigation, investigation or proceeding between the Borrower or any Restricted Subsidiary and any arbitrator or Governmental Authority or (ii) the filing or commencement of, or any material development in, any litigation or proceeding affecting the Borrower or any Restricted Subsidiary, or (iii) the occurrence of any ERISA Event that, in any such case referred to in **clause (i)** through **(iii)**, has resulted, or is reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Each notice pursuant to this **Section 6.03** shall be accompanied by a written statement of a Responsible Officer of the Borrower setting forth a summary description of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. For the avoidance of doubt, the foregoing shall be subject to the provisions of **Section 11.08**.

Section 6.04 Payment of Certain Taxes. Timely pay, discharge or otherwise satisfy, as the same shall become due and payable, all obligations and liabilities in respect of Taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of

its property, except, in each case, to the extent (a) any such Tax, assessment, charge or levy is being contested in good faith and by appropriate actions diligently conducted and for which appropriate reserves have been established in accordance with GAAP or (b) the failure to pay, discharge or otherwise satisfy the same has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 6.05 Preservation of Existence, Etc.

(a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its incorporation or organization, as applicable; and

(b) take all reasonable action to preserve, renew and keep in full force and effect those of its rights (including with respect to Intellectual Property), licenses, permits, privileges, and franchises, that are material to the conduct of the business of the Loan Parties taken as a whole;

except in the case of **clause (a)** or **(b)**, (i) in connection with a transaction permitted by the Loan Documents (including transactions permitted by **Section 7.04** or **Section 7.05**), (ii) with respect to any Immaterial Subsidiary, or (iii) except with respect to the Borrower's compliance with **clause (a)**, to the extent that failure to do so has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 6.06 Maintenance of Properties. Maintain, preserve and protect all of its material properties and equipment used in the operation of its business in good working order, repair and condition (ordinary wear and tear excepted and casualty or condemnation excepted), except to the extent the failure to do so has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 6.07 Maintenance of Insurance.

(a) Except when the failure to do so has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect, maintain or cause to be maintained with insurance companies that the Borrower believes (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage is placed or renewed or with a Captive Insurance Subsidiary, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and of such types and in such amounts (after giving effect to any self-insurance) as are customarily carried under similar circumstances by such other Persons, and furnish to the Administrative Agent, which, absent a continuing Event of Default, shall not be made more than once in any twelve month period, upon reasonable written request from the Administrative Agent, information presented in reasonable detail as to the insurance so carried.

(b) Subject to **Section 6.15**, each such policy of insurance shall as appropriate and is customary,

(i) name the Collateral Agent, on behalf of the Secured Parties, as an additional insured thereunder (with respect to liability insurance), or

(ii) to the extent covering Collateral in the case of property insurance, contain a loss payable clause or endorsement that names the Collateral Agent, on behalf of the Secured Parties, as the lenders' loss payee thereunder;

provided that

(A) absent a Specified Event of Default that is continuing, any proceeds of any such insurance shall be delivered by the insurer(s) to the Borrower or one of its Subsidiaries and may be applied in accordance with (or, if this Agreement does not provide for application of such proceeds, in a manner that is not prohibited by) this Agreement and

(B) this **Section 6.07(b)** shall not be applicable to

(1) business interruption insurance, workers' compensation policies, employee liability policies or directors and officers policies,

(2) policies to the extent the Collateral Agent cannot have an insurable interest therein or is unable to be named as an additional insured or lenders' loss payee thereunder or

(3) the extent unavailable from the relevant insurer after the Borrower's use of its commercially reasonable efforts;

provided, further, that no insurance shall be required in any jurisdiction outside of the United States.

Section 6.08 Compliance with Laws. (a) Comply with the requirements of all Laws (including applicable ERISA-related Laws, and all Environmental Laws) and all orders, writs, injunctions and decrees of any Governmental Authority applicable to it or to its business or property, except to the extent the failure to comply therewith has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect and (b) comply in all material respects with the requirements of the USA PATRIOT Act, FCPA, OFAC, UK Bribery Act of 2010 and other anti-terrorism, anti-corruption and anti-money laundering Laws; *provided* that the requirements set forth in this **Section 6.08**, as they pertain to compliance by any Foreign Subsidiary with the USA PATRIOT ACT, FCPA, OFAC and UK Bribery Act of 2010 are subject to and limited by any Law applicable to such Foreign Subsidiary in its relevant local jurisdiction.

Section 6.09 Books and Records. Maintain proper books of record and account in which entries that are full, true and correct in all material respects shall be made of all material financial transactions and material matters involving the assets and business of the Borrower or such Restricted Subsidiary, as the case may be (it being understood and agreed that Foreign Subsidiaries may maintain individual books and records in conformity with generally accepted accounting principles in their respective countries of organization or operations and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder), in each case, to the extent necessary to prepare the financial statements described in **Sections 6.01(a)** and **6.01(b)**.

Section 6.10 Inspection Rights.

(a) Permit representatives of the Administrative Agent and Required Lenders to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom and to discuss its affairs, finances and accounts with its directors, officers and independent public accountants (subject to such accountants' policies and procedures), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; **provided** that (a) excluding any such visits and inspections during the continuation of an Event of Default, only the Administrative Agent on behalf of the Lenders may exercise rights under this **Section 6.10** and the Administrative Agent shall not exercise such rights more often than two times during any calendar year absent the continuation of an Event of Default and only one such time shall be at the Borrower's expense and (b) when an Event of Default is continuing, the Administrative Agent or the Required Lenders (or any of their respective representatives) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. For the avoidance of doubt, the foregoing shall be subject to the provisions of **Section 11.08**.

(b) (i) From time to time the Administrative Agent may conduct (or engage third parties to conduct) such field examinations, inventory appraisals, verifications and evaluations as the Administrative Agent may deem necessary or appropriate; **provided** that, the Administrative Agent

(a) may conduct (x) one field examination, inventory appraisal, verification and evaluation with respect to the Collateral in each 12-month period after the date of this Agreement and (y) one additional field examination, inventory appraisal, verification and evaluation with respect to the Collateral in each consecutive 12-month period after the date Specified Excess Availability shall have been less than the greater of (a) 12.5% of the Line Cap and (b) \$46,500,000 for five or more consecutive Business Days, and

(b) may conduct such other field examinations, inventory appraisals, verifications and evaluations as frequently as determined by the Administrative Agent in its reasonable discretion upon the occurrence and during the continuance of any Specified ABL Event of Default,

in each case, in a form, and from an Acceptable Appraiser. The Loan Parties will reasonably cooperate with the Administrative Agent and such Acceptable Appraiser in the conduct of such appraisals.

(ii) All such appraisals, field examinations, and other verifications and evaluations shall be at the sole expense of the Loan Parties, and the Administrative Agent shall provide the Borrower with a reasonably detailed accounting of all such expenses. The Loan Parties acknowledge that the Administrative Agent, after exercising its rights of inspection, (x) may prepare and distribute to the Lenders certain Reports pertaining to the

Loan Parties' assets for internal use by the Administrative Agent and the Lenders, subject to the provisions of **Section 11.08** hereof and (y) shall promptly distribute copies of any final reports from a third party appraiser or third party consultant delivered in connection with any field exam or appraisal to the Lenders.

(iii) The Loan Parties will reasonably cooperate with the Administrative Agent and such Acceptable Appraiser in the conduct of such appraisals. Such appraisals, field examinations and other verifications and evaluations will be prepared in a form and on a basis reasonably satisfactory to the Administrative Agent, such appraisals, field examinations and other verifications and evaluations to include, without limitation, information required by applicable law and by the internal policies of the Lenders.

(iv) In addition, the Loan Parties will have the right (but not the obligation), at their expense, at any time and from time to time to provide the Administrative Agent with additional appraisals or updates thereof of any or all of the Collateral from any Acceptable Appraiser prepared in a form and on a basis reasonably satisfactory to the Administrative Agent, in which case such appraisals or updates shall be used in connection with the determination of the Net Orderly Liquidation Value and the calculation of the Borrowing Base hereunder. With respect to each appraisal, made pursuant to this **Section 6.11(b)** after the Closing Date,

(a) the Administrative Agent and the Loan Parties will each be given a reasonable amount of time to review and comment on a draft form of the appraisal prior to its finalization and

(b) any adjustments to the Net Orderly Liquidation Value or the Borrowing Base hereunder as a result of such appraisal shall be reflected in the Borrowing Base Certificate delivered immediately succeeding such appraisal.

(c) The Borrowing Base Parties will conduct a physical count of the Inventory after an occurrence and during the continuation of an Event of Default, at the Administrative Agent's request. The Borrowing Base Parties, at their own expense, shall deliver to the Administrative Agent the results of each physical verification that the Borrowing Base Parties have made, or have caused any other Person to make on its behalf, of all or any portion of its Inventory. The Borrowing Base Parties will maintain a retail stock ledger inventory reporting system at all times.

(d) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, none of the Loan Parties or any of the Restricted Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter with any competitor to the Borrower or any of its Subsidiaries or that (1) constitutes non-financial trade secrets or non-financial proprietary information; (2) in respect of which disclosure is prohibited by law or any binding agreement; (3) is subject to attorney-client or similar privilege or constitutes attorney work product; or (4) creates an unreasonably excessive expense or burden on the Borrower or any of its Subsidiaries; *provided*, in each case, that each of the Loan Parties and the Restricted Subsidiaries shall (i) use commercially reasonable efforts to provide, permit the inspection, examination or making of copies of any such information, documentation or other matter in a manner that does not violate

any such agreements, privilege or applicable law or does not create excessive expense or burden and (ii) have notified the Administrative Agent that such document or information is being withheld on the basis of the foregoing.

Section 6.11 Covenant to Guarantee Obligations and Give Security.

At the Borrower's expense, subject to any applicable limitation in any Loan Document (including **Section 6.12**), take the following actions:

- (i) within ninety days of the occurrence of any Grant Event (or such longer period as the Administrative Agent may agree in its reasonable discretion),
 - (a) cause the Restricted Subsidiary subject of the Grant Event to execute and deliver the Guaranty (or a joinder thereto), which may be accomplished by executing a Guaranty Supplement;
 - (b) cause the Restricted Subsidiary subject of the Grant Event to execute and deliver the Security Agreement (or a supplement thereto), which may be accomplished by executing a Security Agreement Supplement;
 - (c) cause the Restricted Subsidiary subject of the Grant Event to execute and deliver any applicable Intellectual Property Security Agreements with respect to its registered or applied for Intellectual Property constituting Collateral;
 - (d) cause the Restricted Subsidiary subject of the Grant Event to execute and deliver an acknowledgement of the Closing Date ABL Intercreditor Agreement and any other applicable Intercreditor Agreement;
 - (e) cause the Restricted Subsidiary subject of the Grant Event (and any Loan Party of which such Restricted Subsidiary is a direct Subsidiary) to (1) if such Restricted Subsidiary is a corporation or has "opted into" Article 8 of the Uniform Commercial Code, deliver (or deliver to the Term Loan Agent in accordance with the Closing Date ABL Intercreditor Agreement) any and all certificates representing its Equity Interests (to the extent certificated) that constitute Collateral and are required to be delivered pursuant to the Security Agreement accompanied by undated stock powers or other appropriate instruments of transfer executed in blank (or any other documents customary under local law), (2) execute and deliver a counterparty signature page to the Global Intercompany Note (or a joinder thereto), (3) deliver all instruments evidencing Indebtedness held by such Restricted Subsidiary that constitute Collateral and are required to be delivered pursuant to the Security Agreement, endorsed in blank, to the Collateral Agent, and (4) if such Restricted Subsidiary is a Foreign Subsidiary, deliver such additional Collateral Documents and enter into additional collateral arrangements in the jurisdiction of such Foreign Subsidiary reasonably satisfactory to the Administrative Agent;
 - (f) upon the reasonable request of the Administrative Agent, take and cause the Restricted Subsidiary the subject of the Grant Event and each direct or indirect

parent of such Restricted Subsidiary that is required to become a Subsidiary Guarantor pursuant to this Agreement that directly holds Equity Interests in such Restricted Subsidiary to take such customary actions as may be necessary in the reasonable opinion of the Administrative Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) perfected Liens (subject to Permitted Liens) in the Equity Interests of such Restricted Subsidiary and the personal property and fixtures of such Restricted Subsidiary to the extent required by the Loan Documents, enforceable against all third parties in accordance with their terms, except as such enforceability may be limited by applicable Debtor Relief Laws and by general principles of equity (regardless of whether enforcement is sought in equity or at law);

(g) upon request of the Administrative Agent deliver to the Administrative Agent a signed copy of a customary opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties as to such matters set forth in this **Section 6.11(a)** as the Administrative Agent may reasonably request; *provided* that such matters are not inconsistent with those addressed in opinions delivered on the Closing Date or customary market practice;

provided that without limiting the obligations set forth above, the Administrative Agent and the Collateral Agent will consult in good faith with the Borrower to reduce any stamp, filing or similar taxes imposed as a result of the actions described in the foregoing provisions.

Section 6.12 Further Assurances. Subject to **Section 6.11** and any applicable limitations in any Collateral Document, and in each case at the expense of the Borrower, promptly upon the reasonable request by the Administrative Agent or Collateral Agent (a) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent or Collateral Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Collateral Documents.

Notwithstanding anything to the contrary in any Loan Document, other than with respect to the Equity Interests and assets of any Foreign Subsidiary that becomes a Loan Party, neither the Borrower, nor any Restricted Subsidiary will be required to, nor will the Administrative Agent or the Collateral Agent be authorized,

(i) to perfect security interests in the Collateral other than by,

(a) “all asset” filings pursuant to the Uniform Commercial Code in the office of the secretary of state (or similar central filing office) of the relevant state(s);

(b) filings in (1) the United States Patent and Trademark Office with respect to any U.S. issued or applied for patents and registered or applied for trademarks and (2) the United States Copyright Office of the Library of Congress with respect

to material copyright registrations, in the case of each of **clause (1)** and **(2)**, constituting Collateral; and

(c) delivery to the Administrative Agent or Collateral Agent (or a bailee of the Administrative Agent or Collateral Agent in accordance with the Closing Date ABL Intercreditor Agreement) to be held in its possession of all Collateral consisting of (1) certificates representing Pledged Equity and (2) promissory notes and other instruments constituting Collateral, in each case, in the manner provided in the Collateral Documents; **provided** that promissory notes and instruments having an aggregate principal amount equal to or less than the Materiality Threshold Amount need not be delivered to the Collateral Agent;

(ii) other than as set forth in **Section 6.18** and in the definition of “**Qualified Cash**” or in relation to any Cash Collateral arrangement required hereunder, to enter into any control agreement, blocked account agreement, lockbox or similar arrangement with respect to any deposit account, securities account, commodities account or other bank account, or otherwise take or perfect a security interest with control;

(iii) [reserved]; or

(iv) to take any action with respect to perfecting a Lien with respect to letters of credit, letter of credit rights, commercial tort claims, chattel paper or assets subject to a certificate of title or similar statute (in each case, other than the filing of customary “all asset” UCC-1 financing statements) or to deliver landlord lien waivers, estoppels, bailee letters or collateral access letters, in each case, unless required by the terms of the Security Agreement or the relevant Collateral Document.

Further, the Loan Parties shall not be required to perform any periodic collateral reporting, if any, with any frequency greater than once per fiscal year (**provided** that this clause shall not limit the obligation of the Loan Parties to comply with **Section 6.02(c)** or **Section 6.11** or the Collateral Documents).

Section 6.13 Designation of Subsidiaries. The Borrower may at any time designate any Restricted Subsidiary as an Unrestricted Subsidiary or designate (or re-designate, as the case may be) any Unrestricted Subsidiary as a Restricted Subsidiary; **provided** that

(a) immediately before and after such designation (or re-designation), no Specified Event of Default or Specified ABL Event of Default shall have occurred and be continuing;

(b) the Investment resulting from the designation of such Restricted Subsidiary as an Unrestricted Subsidiary as described above is permitted by **Section 7.02**;

(c) no Subsidiary may be designated as an Unrestricted Subsidiary unless it is also designated as an “unrestricted subsidiary” under the Term Loan Credit Agreement; and

(d) if such designation (or re-designation) would result in a reduction in Excess Availability of 10% or more, the Borrower shall submit an updated Borrowing Base Certificate at the time such designation (or re-designation) is made.

The designation of any Subsidiary as an Unrestricted Subsidiary shall constitute an Investment by the Borrower therein at the date of designation in an amount equal to the fair market value of the Borrower's or its Restricted Subsidiary's (as applicable) Investment therein. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Indebtedness and Liens of such Subsidiary existing at such time and a return on any Investment by the Borrower in Unrestricted Subsidiaries pursuant to the preceding sentence in an amount equal to the fair market value at the date of such designation of the Borrower's or its Restricted Subsidiary's (as applicable) Investment in such Subsidiary. Except as set forth in this paragraph, no Investment will be deemed to exist or have been made, and no Indebtedness or Liens shall be deemed to have been incurred or exist, by virtue of a Subsidiary becoming an Excluded Subsidiary or an Excluded Subsidiary becoming a Restricted Subsidiary. For all purposes hereunder, the designation of a Subsidiary as an Unrestricted Subsidiary shall be deemed to constitute a concurrent designation of any Subsidiary of such Subsidiary as an Unrestricted Subsidiary. No Co-Borrower may be designated as an Unrestricted Subsidiary.

Section 6.14 [Reserved].

Section 6.15 Post-Closing Matters. The Borrower will, and will cause each of its Restricted Subsidiaries to, take each of the actions set forth on **Schedule 6.15** within the time period prescribed therefor on such schedule (as such time period may be extended by the Administrative Agent).

Section 6.16 Use of Proceeds.

(a) The proceeds of Revolving Loans will be used for working capital and other general corporate purposes of the Borrower and its Restricted Subsidiaries, including the financing of Permitted Acquisitions, Investments and other transactions, in each case, that are not prohibited by the terms of this Agreement and that are not in violation of **Sections 5.17** and **5.19**.

(b) Letters of Credit will be used for general corporate purposes of the Borrower and its Restricted Subsidiaries, including supporting transactions not prohibited by the Loan Documents, and will not be used in violation of **Sections 5.17** and **5.19**.

Section 6.17 Change in Nature of Business. Engage only in material lines of business that are substantially consistent with those lines of business conducted by the Borrower and the Restricted Subsidiaries on the Closing Date and lines of business that are reasonably similar, corollary, ancillary, incidental, synergistic, complementary or related to, or a reasonable extension, development or expansion of, the businesses conducted or proposed to be conducted by the Borrower and the Restricted Subsidiaries on the Closing Date, in each case as determined by the Borrower in good faith.

Section 6.18 Cash Receipts.

(a) Within 90 days after the Closing Date (or such longer period as may be consented to by the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed):

(i) enter into blocked account agreements (each, a “**Blocked Account Agreement**”), in form reasonably satisfactory to the Administrative Agent, with the Collateral Agent and any bank with which any Borrowing Base Party or any Subsidiary Loan Party maintains any DDA other than an Excluded Account (a “**Blocked Account**”) covering each such Blocked Account maintained with such bank;

(ii) ensure that all cash, checks, proceeds of collections of Accounts and other amounts received by or on behalf of any Borrowing Base Party or any Loan Party are deposited promptly upon receipt in accordance with historical practices into a DDA maintained in the name of such Borrowing Base Party or such Subsidiary Loan Party; and

(iii) deliver notifications to each depository institution with which any DDA is maintained, in form reasonably satisfactory to the Administrative Agent (each, a “**DDA Notification**”), instructing such depository institution to sweep, no less frequently than once per Business Day, all available cash balances and cash receipts, including the then contents or then entire ledger balance of such DDA net of such minimum balance (not to exceed \$500,000 per account), if any, required by the bank at which such DDA is maintained to a concentration account of the Borrowing Base Parties and the other Loan Parties that are subject to Blocked Account Agreements; **provided** that the Borrowing Base Parties and other Subsidiary Loan Parties may maintain credit balances (including cash and cash equivalents) in DDAs or other deposit or securities accounts that are Excluded Accounts.

Notwithstanding anything herein to the contrary, the provisions of this **Section 6.18(a)** will not apply to any deposit account that is acquired by a Loan Party in connection with a Permitted Acquisition or other Investment permitted under this Agreement prior to the date that is 90 days (or such later date as may be consented to by the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed) following the date of such Permitted Acquisition or other Investment, and the balances held in such deposit accounts at the date of such Permitted Acquisition or other Investment shall not be counted toward the amount set forth in **clause (a)** of the definition of “**Excluded Account**” until the end of such 90 day period (or later period, if applicable).

(b) Within 90 days after the Closing Date (or such longer period as may be consented to by the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed), deliver to the Administrative Agent notifications in form reasonably satisfactory to the Administrative Agent executed on behalf of each applicable Borrowing Base Party and addressed to such Borrowing Base Party's Credit Card Processors (each, a “**Credit Card Notification**”);

provided that, with respect to each of **Sections 6.18(a)** and **(b)**:

(i) Each Blocked Account Agreement and Credit Card Notification will require, during a Cash Dominion Period and upon receipt by the Borrower of written notice thereof by the Administrative Agent, the ACH or wire transfer no less frequently than once per Business Day of all available cash balances and cash receipts, including the then contents or then entire ledger balance of each Blocked Account net of such minimum balance (not to exceed \$100,000 per account), if any, required by the bank at which such Blocked

Account is maintained to an account established with, and subject to the control of, the Administrative Agent (the “***Dominion Account***”).

(ii) All collected amounts received in the Dominion Account during a Cash Dominion Period and upon receipt by the Borrower of written notice thereof by the Administrative Agent shall be distributed and applied on a daily basis to the repayment of all Loans outstanding under this Agreement and to the payment of all other Obligations then due and owing pursuant to the waterfall set forth in **Section 2.07(d)** with any excess, unless an Event of Default shall have occurred and be continuing, to be remitted to the Borrower.

(iii) At any time after the occurrence and during the continuance of a Cash Dominion Period as to which the Administrative Agent has notified the Borrower, any cash or Cash Equivalents owned by any Borrowing Base Party or Loan Party are deposited to any account, held or invested in any manner, otherwise than in a Blocked Account subject to a Blocked Account Agreement (or a DDA which is swept daily to such Blocked Account), the Administrative Agent will be entitled to require the applicable Borrowing Base Party or Subsidiary Loan Party to close such account and have all funds therein transferred to a Blocked Account;

provided that the foregoing will not apply to cash or Cash Equivalents constituting Term Priority Collateral required to be deposited in a blocked account in favor of the lenders under the Term Loan Credit Agreement pursuant to the terms of the Term Loan Credit Agreement; ***provided, further***, that the foregoing will not apply to cash or Cash Equivalents deposited, held or invested in any of the following:

(x) any Excluded Account;

(y) an amount not to exceed \$20,000,000 in the aggregate that is on deposit in a segregated DDA that the Borrower designates in writing to the Agent as being the “uncontrolled cash account” (the “***Designated Disbursement Account***”), which funds will not be funded from, or when withdrawn from the Designated Disbursement Account, will not be replenished by, funds constituting Collateral (or proceeds of Collateral) so long as a Cash Dominion Period continues; or

(z) de minimus cash or cash equivalents from time to time inadvertently misapplied by the Borrower or any Restricted Subsidiary.

(c) The Loan Parties may close DDAs or Blocked Accounts and/or open new DDAs or Blocked Accounts, subject to the contemporaneous execution and delivery to the Administrative Agent of a DDA Notification or Blocked Account Agreement consistent with the provisions of this **Section 6.18**; ***provided***, that the Loan Parties may close DDAs or open new DDAs that are Excluded Accounts without executing or delivering any such DDA Notification or Blocked Account Agreement. Unless consented to in writing by the Administrative Agent, the Loan Parties will not enter into any agreements with credit card processors unless contemporaneously therewith a Credit Card Notification is executed by a Loan Party or Restricted Subsidiary and a copy thereof is delivered to the Administrative Agent.

(d) The Dominion Account will at all times be under the sole dominion and control of the Collateral Agent.

(e) So long as (i) no Event of Default has occurred and is continuing and (ii) no Cash Dominion Period is then in effect, the Loan Parties will have full and complete access to, and may direct the manner of disposition of, funds in the Blocked Accounts.

(f) Any amounts held or received in the Dominion Account (including all interest and other earnings with respect thereto, if any) at any time

(i) after this Agreement has been terminated, the Commitments have been terminated and the Obligations (other than contingent indemnification obligations for which no claim has been asserted) have been paid in full and all Letters of Credit have expired, terminated or been cash collateralized on terms satisfactory to the Issuing Bank or

(ii) when all Events of Default have been cured and no Cash Dominion Period is then in effect will be remitted to the Loan Parties as the Borrower may direct.

ARTICLE VII. NEGATIVE COVENANTS

So long as the Termination Conditions are not satisfied, the Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to:

Section 7.01 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, that secures Indebtedness other than the following:

(a) Liens securing obligations in respect of Indebtedness incurred pursuant to Section 7.03(a), including obligations under any Loan Document, Incremental Loans and Extended Loans;

(b) Liens securing obligations in respect of Indebtedness incurred pursuant to Section 7.03(b), including obligations with respect to the Term Loan Credit Facility; *provided*, that any such Liens on ABL Priority Collateral are at all times subject to the Closing Date ABL Intercreditor Agreement or any other intercreditor agreement that may be executed from time to time and reasonably acceptable to the Administrative Agent that provides that such Liens shall rank on a junior lien basis in respect of the ABL Priority Collateral to the Liens on the ABL Priority Collateral securing the Obligations;

(c) Liens existing on the Closing Date (other than Liens incurred under Sections 7.01(a) and 7.01(b));

(d) Liens securing obligations in respect of Indebtedness permitted under Section 7.03(d), including in respect to Attributable Indebtedness, Capitalized Lease Obligations, and Indebtedness financing the acquisition, construction, repair, replacement or improvement of fixed or capital assets; *provided* that (i) such Liens attach concurrently with or within two hundred and seventy days after completion of the acquisition, construction, repair, replacement or improvement (as applicable) of the property subject to such Liens and (ii) such Liens do not at any time extend

to or cover any assets (except for additions and accessions to such assets, replacements and products thereof and customary security deposits) other than the assets subject to, or acquired, constructed, repaired, replaced or improved with the proceeds of such Indebtedness; **provided** that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender or its affiliates or branches;

(e) Liens in favor of a Loan Party securing Indebtedness permitted under **Section 7.03**;

(f) Liens securing (i) Obligations in respect of any Secured Hedge Agreement, (ii) obligations in respect of any Secured Hedge Agreement (as defined in the Term Loan Credit Agreement) and (iii) other Indebtedness permitted by **Section 7.03(f)**;

(g) Liens on assets of Non-Loan Parties securing obligations of such Non-Loan Parties and Liens on Excluded Assets;

(h) Liens securing obligations in respect of Permitted Pari Passu Secured Refinancing Debt or Permitted Junior Secured Refinancing Debt and any Permitted Refinancing of any of the foregoing incurred pursuant to **Section 7.03(h)**; **provided**, that any such Liens on ABL Priority Collateral are at all times subject to the Closing Date ABL Intercreditor Agreement or any other intercreditor agreement that may be executed from time to time and reasonably acceptable to the Administrative Agent that provides that such Liens shall rank on a junior lien basis in respect of the ABL Priority Collateral to the Liens on the ABL Priority Collateral securing the Obligations;

(i) Liens securing obligations in respect of Incremental Equivalent Debt (with the lien priority permitted in such definition and other than to the extent such Indebtedness is only permitted to be incurred as unsecured Indebtedness); **provided**, that, subject to the penultimate paragraph of this **Section 7.01**, any such Liens on ABL Priority Collateral in respect thereof are at all times subject to the Closing Date ABL Intercreditor Agreement or any other intercreditor agreement that may be executed from time to time and reasonably acceptable to the Administrative Agent;

(j) Liens securing obligations in respect of Permitted Ratio Debt (with the lien priority permitted in such definition and other than to the extent such Indebtedness is only permitted to be incurred as unsecured Indebtedness); **provided**, that, subject to the penultimate paragraph of this **Section 7.01**, any such Liens on ABL Priority Collateral in respect thereof are at all times subject to the Closing Date ABL Intercreditor Agreement or any other intercreditor agreement that may be executed from time to time and reasonably acceptable to the Administrative Agent;

(k) Liens on property or assets contributed to capital of the Borrower or a Subsidiary Guarantor or received in exchange for Equity Interests of the Borrower made after the Closing Date solely to the extent Not Otherwise Applied;

(l) (i) Liens existing on property (other than Accounts, unless such Liens are expressly made junior to the Liens securing the Obligations hereunder) at the time of (and not in contemplation of) its acquisition or existing on the property of any Person or on Equity Interests of any Person, in each case, at the time such Person becomes (and not in contemplation of such Person becoming) a Restricted Subsidiary, in each case after the Closing Date; **provided** that

(A) such Lien does not extend to or cover any other assets or property (other than (1) after-acquired property covered by any applicable grant clause, (2) property that is affixed or incorporated into the property covered by such Lien and (3) proceeds and products of assets covered by such Liens),

(B) such Lien does not encumber any assets of the Borrower or its Restricted Subsidiaries other than the assets acquired in such transaction and

(C) the Indebtedness secured thereby is permitted under **Section 7.03**,

(ii) Liens on any cash earnest money deposits made by the Borrower or any of the Restricted Subsidiaries in connection with any letter of intent or purchase agreement relating to an Investment and

(iii) Liens incurred in connection with escrow arrangements or other agreements relating to an Acquisition Transaction or Investment permitted hereunder;

(m) Liens

(i) on cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to **Section 7.02** to be applied against the purchase price for such Investment or

(ii) consisting of an agreement to Dispose of any property in a Disposition, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(n) (i) pledges or deposits in the ordinary course of business in connection with workers' compensation, health, disability or employee benefits, unemployment insurance and other social security laws or similar legislation or regulation or other insurance-related obligations (including in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) and

(ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any Restricted Subsidiaries;

(o) (i) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto and

(ii) Liens on cash securing obligations to insurance companies with respect to insurable liabilities incurred in the ordinary course of business;

(p) deposits to secure the performance of bids, trade contracts, governmental contracts and leases (other than Indebtedness for borrowed money), statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including

those to secure health, safety and environmental obligations) incurred in the ordinary course of business;

(q) Liens on the Securitization Assets arising in connection with a Qualified Securitization Financing;

(r) Liens in respect of the cash collateralization of letters of credit;

(s) Liens

(i) of a collection bank arising under Section 4-208 or 4-210 of the Uniform Commercial Code on the items in the course of collection,

(ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business and not for speculative purposes and

(iii) in favor of a banking or other financial institution arising as a matter of law encumbering deposits or other funds maintained with a financial institution (including the right of setoff) and that are within the general parameters customary in the banking industry;

(t) Liens securing Cash Management Obligations and Cash Management Obligations (as defined in the Term Loan Credit Agreement), in each case, as permitted by **Section 7.03**;

(u) Liens that are customary contractual rights of setoff

(i) relating to the establishment of depository relations with banks or other deposit-taking financial institutions in the ordinary course of business (and, for the avoidance of doubt, not given in connection with the issuance of Indebtedness),

(ii) relating to pooled deposit or sweep accounts of the Borrower or any of the Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business or

(iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any of the Restricted Subsidiaries in the ordinary course of business;

(v) statutory or common law Liens of landlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens, or other customary Liens (other than in respect of Indebtedness) in favor of landlords, so long as, in each case, such Liens arise in the ordinary course of business and secure amounts not overdue for a period of more than sixty days or, if more than sixty days overdue, are unfiled and no other action has been taken to enforce such Lien or that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(w) any interest or title of a lessor, sublessor, licensor or sublicensor or secured by a lessor's, sublessor's, licensor's or sublicensor's interest under leases or licenses entered into by

the Borrower or any of the Restricted Subsidiaries as lessee or licensee in the ordinary course of business;

(x) ground leases in respect of real property on which facilities owned or leased by the Borrower or any of its Subsidiaries are located;

(y) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of the Borrower and the Restricted Subsidiaries, taken as a whole;

(z) deposits of cash with the owner or lessor of premises leased and operated by the Borrower or any of the Restricted Subsidiaries in the ordinary course of business to secure the performance of the Borrower's or a Restricted Subsidiary's obligations under the terms of the lease for such premises;

(aa) (i) Liens for taxes, assessments or governmental charges that are not overdue for a period of more than sixty days or that are being contested in good faith and by appropriate actions diligently conducted and for which appropriate reserves have been established in accordance with GAAP or that are not expected to result in a Material Adverse Effect and

(ii) Liens for property taxes on property the Borrower or its Subsidiaries has decided to abandon if the sole recourse for such tax, assessment or charge is to such property;

(bb) easements, rights-of-way, restrictions (including zoning restrictions), encroachments, protrusions and other similar encumbrances and title defects affecting real property that, in the aggregate, do not in any case materially interfere with the ordinary conduct of the business of the Borrower and the Restricted Subsidiaries taken as a whole, or the use of the property for its intended purpose;

(cc) Liens arising from judgments or orders for the payment of money not constituting an Event of Default under **Section 9.01(g)**;

(dd) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business (including any other agreement under which the Borrower or any Restricted Subsidiary has granted rights to end users to access and use the Borrower's or any Restricted Subsidiary's products, technologies, facilities or services) which do not interfere in any material respect with the business of the Borrower and the Restricted Subsidiaries, taken as a whole;

(ee) Liens

(i) in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business and

(ii) on specific items of inventory or other goods and proceeds thereof of any Person securing such Person's obligations in respect of bankers' acceptances or

documentary letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or such other goods in the ordinary course of business;

(ff) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or any of the Restricted Subsidiaries in the ordinary course of business;

(gg) Liens imposed by law or incurred pursuant to customary reservations or retentions of title (including contractual Liens in favor of sellers and suppliers of goods) incurred in the ordinary course of business for sums not constituting borrowed money that are not overdue for a period of more than sixty days or that are being contested in good faith by appropriated proceedings and for which adequate reserves have been established in accordance with GAAP (if so required);

(hh) Liens deemed to exist in connection with Investments in repurchase agreements and reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts maintained in the ordinary course of business and not for speculative purposes;

(ii) Liens on cash and Cash Equivalents earmarked to be used to satisfy or discharge Indebtedness where such satisfaction or discharge of such Indebtedness is not otherwise prohibited by this Agreement;

(jj) purported Liens evidenced by the filing of precautionary Uniform Commercial Code financing statements or similar public filings;

(kk) the modification, replacement, renewal or extension of any Lien permitted by this **Section 7.01**; *provided* that

(i) the Lien does not extend to any additional property, other than (A) after-acquired property covered by any applicable grant clause, (B) property that is affixed or incorporated into the property covered by such Lien and (C) proceeds and products of assets covered by such Liens, and

(ii) the renewal, extension or refinancing of the obligations secured or benefited by such Liens is permitted by **Section 7.03**;

(ll) Liens securing:

(i) a Permitted Refinancing of Indebtedness; *provided* that:

(a) such Indebtedness was permitted by **Section 7.03** and was secured by a Permitted Lien;

(b) such Permitted Refinancing is permitted by **Section 7.03**; and

(c) the Lien does not extend to any additional property, other than (1) after-acquired property covered by any applicable grant clause, (2) property that is

affixed or incorporated into the property covered by such Lien and (3) proceeds and products of assets covered by such Liens; and

(ii) Guarantees permitted by **Sections 7.03** to the extent that the underlying Indebtedness subject to such Guarantee is permitted to be secured by a Lien;

(mm) Liens securing Pari Passu Lien Debt and/or Junior Lien Debt; *provided* that:

(i) such Indebtedness is incurred pursuant to **clause (a)(i)** or **(a)(ii)** of the definition of “*Permitted Ratio Debt*”; and

(ii) such Liens (other than with respect to purchase money and similar obligations) are, in each case, subject to the penultimate paragraph of this **Section 7.01**, to the extent such Indebtedness is required to be subject to the provisions of the Closing Date ABL Intercreditor Agreement, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to, or is otherwise subject to the provisions of the Closing Date ABL Intercreditor Agreement or any other intercreditor agreement that may be executed from time to time and reasonably acceptable to the Administrative Agent;

(nn) Liens securing Indebtedness or other obligations in an aggregate principal amount as of the date such Indebtedness is incurred not to exceed the greater of (A) 50.00% of Closing Date EBITDA and (B) 50.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination, in each case, determined as of the date such Indebtedness is incurred (or commitments with respect thereto are received); *provided* that it is agreed that Liens incurred pursuant to this **clause (nn)** may be *pari passu* with the Liens securing the Term Loan Obligations; *provided, further*, that, subject to the penultimate paragraph of this **Section 7.01**, any Liens on ABL Priority Collateral in respect thereof are at all times subject to the Closing Date ABL Intercreditor Agreement or any other intercreditor agreement that may be executed from time to time and reasonably acceptable to the Administrative Agent;

(oo) Liens in respect of the cash collateralization of corporate credit card programs; *provided* that the aggregate amount of such cash securing such obligations shall not exceed \$15,000,000;

(pp) Liens securing obligations in respect of Indebtedness incurred pursuant to **Section 7.03(k)**; and

(qq) Liens securing obligations in respect of Indebtedness incurred pursuant to **Section 7.03(x)**.

Notwithstanding the foregoing, any Indebtedness secured by a Lien on ABL Priority Collateral pursuant to **clauses (i), (j), (mm), (nn)** and **(pp)** above, that is not subject to the Closing Date ABL Intercreditor Agreement or another Intercreditor Agreement that provides that such Liens shall rank on a junior lien basis in respect of the ABL Priority Collateral to the Liens on the ABL Priority Collateral securing the Obligations, shall not exceed \$5 million in the aggregate at any time outstanding.

For purposes of determining compliance with this **Section 7.01**, in the event that any Lien (or any portion thereof) meets the criteria of more than one of the categories set forth above, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Lien (or any portion thereof) in any manner that complies with this covenant on the date such Lien is incurred or such later time, as applicable; *provided* that all Liens securing Indebtedness under

(a) the Loan Documents will be deemed to have been incurred in reliance on the exception in **Section 7.01(a)** and

(b) the Term Loan Credit Agreement on the Closing Date will be deemed incurred in reliance on the exception in **Section 7.01(b)**, and shall not be permitted to be reclassified pursuant to this paragraph.

Section 7.02 Investments. Make or hold any Investments, except:

(a) Investments:

(i) by the Borrower or any Restricted Subsidiary in the Borrower or any Restricted Subsidiary; and

(ii) by the Borrower or any Restricted Subsidiary in a Person, if as a result of such Investment (A) such Person becomes a Restricted Subsidiary or (B) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Borrower or a Restricted Subsidiary;

(b) Investments existing on the Closing Date or made pursuant to legally binding written contracts in existence on the Closing Date and any modification, replacement, renewal, reinvestment or extension of any of the foregoing; *provided* that the amount of any Investment permitted pursuant to this **Section 7.02(b)** is not increased from the amount of such Investment on the Closing Date except pursuant to the terms of such Investment as of the Closing Date or as otherwise permitted by another clause of this **Section 7.02**;

(c) Permitted Acquisitions;

(d) Investments

(i) held by a Restricted Subsidiary acquired after the Closing Date or of a Person merged, amalgamated or consolidated with or into the Borrower or merged, amalgamated or consolidated with or into a Restricted Subsidiary (or committed to be made by any such Person) to the extent that, in each case, such Investments or any such commitments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation and

(ii) held by Persons that become Restricted Subsidiaries after the Closing Date, including Investments by Unrestricted Subsidiaries made or acquired (or committed to be made or acquired), to the extent that such Investments were not made or acquired (or

committed to be made or acquired) in contemplation of, or in connection with, such Person becoming a Restricted Subsidiary or such designation as applicable;

(e) Investments in Similar Businesses that do not exceed in the aggregate the greater of (i) 25.00% of Closing Date EBITDA and (ii) 25.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination; **provided** that if any Investment pursuant to this **clause (e)** is made in any Person that is not the Borrower or a Restricted Subsidiary on the date of such Investment (prior to giving effect thereto) and such Person subsequently becomes the Borrower or a Restricted Subsidiary, the Investment initially made in such Person pursuant to this **clause (e)** shall thereupon be deemed to have been made pursuant to **clause (a)(i)** hereof and to not have been made pursuant to this **clause (e)** for so long as such Person continues to be the Borrower or a Restricted Subsidiary.

(f) Investments in Unrestricted Subsidiaries in an aggregate amount which does not exceed the greater of (A) 25.00% of Closing Date EBITDA and (B) 25.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination; **provided** that, in the case of any such Investment, no Specified Event of Default has occurred or is continuing or would result therefrom;

(g) Investments to the extent that payment for such Investments is made solely with Qualified Equity Interests of the Borrower or the proceeds from the issuance thereof;

(h) Joint Venture Investments;

(i) [Reserved];

(j) loans or advances to any Company Person;

(i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes;

(ii) in connection with such Person's purchase of Equity Interests of the Borrower; **provided** that, to the extent such loans or advances are made in cash, the amount of such loans and advances used to acquire such Equity Interests shall be contributed to the Borrower in cash; and

(iii) for any other purpose; **provided** that either (A) no cash or Cash Equivalents are advanced in connection with such Investment or (B) the aggregate principal amount outstanding under this **clause (iii)(B)** shall not exceed the greater of (1) 10.00% of Closing Date EBITDA and (2) 10.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination;

(k) Investments in Hedge Agreements;

(l) promissory notes and other Investments received in connection with Dispositions or any other transfer of assets not constituting a Disposition;

- (m) Investments in assets that are cash or Cash Equivalents or were Cash Equivalents when made;
- (n) Investments consisting of extensions of trade credit or otherwise made in the ordinary course of business, including Investments consisting of endorsements for collection or deposit and trade arrangements with customers, vendors, suppliers, licensors and licensees;
- (o) Investments consisting of Liens, Indebtedness (including Guarantees), fundamental changes, Dispositions and Restricted Payments permitted under **Sections 7.01, 7.03, 7.04** (other than **clause (f)** thereof), **7.05** (other than **clause (e)** thereof) and **7.06** (other than **clauses (d)** hereof), respectively;
- (p) Investments
 - (i) received in connection with the bankruptcy, workout, recapitalization or reorganization of, or in settlement of delinquent obligations of, or other disputes with, any other Person who is not an Affiliate of the Borrower,
 - (ii) received in connection with the foreclosure of any secured Investment or other transfer of title with respect to any secured Investment,
 - (iii) in satisfaction of judgments against other Persons who are not Affiliates of the Borrower,
 - (iv) as a result of the settlement, compromise or resolutions of litigation, arbitration or other disputes with Persons who are not Affiliates of the Borrower and
 - (v) received in satisfaction or partial satisfaction of trade credit and other credit extended in the ordinary course of business, including to vendors and suppliers;
- (q) advances of payroll or other payments to any Company Person;
- (r) Investments consisting of purchases and acquisitions of inventory, supplies, material, services or equipment or the licensing or contribution of Intellectual Property pursuant to joint marketing arrangements with other Persons;
- (s) Investments made in connection with obtaining, maintaining or renewing client contracts and loans or advances made to distributors, vendors, suppliers, licensors and licensees;
- (t) Guarantees of leases (other than Capitalized Leases) or of other obligations that do not constitute Indebtedness;
- (u) Investments in connection with any Permitted Reorganization and the transactions relating thereto or contemplated thereby;
- (v) Investments in connection with any deferred compensation plan or arrangement or other compensation plan or arrangement, including to a “rabbi” trust or to any grantor trust claims of creditors;

(w) in the event that the Borrower or any Restricted Subsidiary makes any Investment after the Closing Date in any Person that is not a Restricted Subsidiary and such Person subsequently becomes a Restricted Subsidiary, additional Investments in an amount equal to the fair market value of such Investment as of the date on which such Person becomes a Restricted Subsidiary to the extent Investment capacity is not otherwise increased hereunder by such Person becoming a Restricted Subsidiary (including by way of reclassification);

(x) any Investments held by or committed to by the Borrower or any Restricted Subsidiary on the Closing Date;

(y) unfunded pension fund and other employee benefit plan obligations and liabilities to the extent that such obligations and/or liabilities, as applicable, are permitted to remain unfunded under applicable Law;

(z) Investments in connection with intercompany cash management services, treasury arrangements and any related activities;

(aa) Investments consisting of (i) the licensing or contribution of Intellectual Property pursuant to joint marketing, collaborations or other similar arrangements with other Persons and/or (ii) minority equity interests in customers received as part of fee arrangements or other commercial arrangements;

(bb) the conversion to Qualified Equity Interests of any Indebtedness owed by the Borrower or any Restricted Subsidiary;

(cc) (i) Investments in a Securitization Subsidiary or any Investment by a Securitization Subsidiary in any other Person in connection with a Qualified Securitization Financing; *provided however*, that any such Investment in a Securitization Subsidiary is of Securitization Assets or equity, and

(ii) distributions or payments of Securitization Fees and purchases of Securitization Assets pursuant to a Securitization Repurchase Obligation in connection with a Qualified Securitization Financing;

(dd) Investments in any Captive Insurance Subsidiary in the ordinary course of business and consistent with market practice for Captive Insurance Subsidiaries of similar nature, size and type;

(ee) [reserved];

(ff) [reserved];

(gg) [reserved];

(hh) Investments that do not exceed in the aggregate at any time outstanding the greater of (A) 75.00% of Closing Date EBITDA and (B) 75.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination; and

(ii) Investments, so long as the Payment Conditions are satisfied (after giving Pro Forma Effect to such Investment and the use of proceeds thereof).

If any Investment is made in any Person that is not a Restricted Subsidiary on the date of such Investment and such Person subsequently becomes a Restricted Subsidiary, such Investment shall thereupon be deemed to have been made pursuant to **Section 7.02(a)(i)** and to not have been made pursuant to any other clause set forth above.

Notwithstanding anything to the contrary contained herein, in no event shall the Borrower or any Restricted Subsidiary (a) consummate any disposition of any material intellectual property to any Unrestricted Subsidiary, (b) contribute or otherwise make any Investment of any material intellectual property to or in any Unrestricted Subsidiary or (c) designate any Subsidiary as an Unrestricted Subsidiary if such Subsidiary owns any material intellectual property; *provided* that the foregoing **clauses (a), (b) and (c)** shall not apply to transactions that have a bona fide business purpose so long as such transactions are not undertaken to facilitate a financing (including a debtor in possession financing) or a Restricted Payment or undertaken in connection with a liability management transaction.

For purposes of determining compliance with this **Section 7.02**, in the event that any Investment (or any portion thereof) meets the criteria of more than one of the categories set forth above, the Borrower may, in its sole discretion, at the time such Investment is made, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Investment (or any portion thereof) in any manner that complies with this covenant on the date such Investment is made or such later time, as applicable.

The amount of any Investment at any time shall be the amount of cash and the fair market value of other property actually invested (measured at the time made), without adjustment for subsequent changes in the value of such Investment at the Borrower's option, net of any return, whether a return of capital, interest, dividend or otherwise, with respect to such Investment. To the extent any Investment in any Person is made in compliance with this **Section 7.02** in reliance on a category above that is subject to a Dollar-denominated restriction on the making of Investments and, subsequently, such Person returns to the Borrower or any Restricted Subsidiary all or any portion of such Investment (in the form of a dividend, distribution, liquidation or otherwise, but excluding intercompany Indebtedness), such return shall be deemed to be credited to the Dollar-denominated category against which the Investment is then charged. To the extent the category subject to a Dollar-denominated restriction is also subject to a percentage of TTM Consolidated Adjusted EBITDA restriction which, at the date of determination, produces a numerical restriction that is greater than such Dollar Amount, then such Dollar equivalent shall be deemed to be substituted in lieu of the corresponding Dollar Amount in the foregoing sentence for purposes of determining such credit.

For purposes of determining compliance with any Dollar-denominated (or percentage of TTM Consolidated Adjusted EBITDA, if greater) restriction on the making of Investments, the Dollar equivalent amount of the Investment denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Investment was made.

Section 7.03 Indebtedness. Create, incur or assume any Indebtedness, other than:

- (a) Indebtedness under the Loan Documents (including Incremental Loans and Extended Loans);
 - (b) Indebtedness in respect of
 - (i) [reserved];
 - (ii) (A) the Term Loan Documents in an aggregate principal amount not to exceed the sum of (x) \$1,700,000,000, *plus* (y) the Incremental Amount (as defined in the Term Loan Credit Agreement as in effect on the Closing Date) and (B) any Permitted Refinancing in respect of the foregoing;
 - (c) Indebtedness existing on the Closing Date (other than Indebtedness under the Term Loan Credit Agreement) and any Permitted Refinancing thereof, including any intercompany Indebtedness of the Borrower or any Restricted Subsidiary outstanding on the Closing Date;
 - (d)
 - (i) (A) Attributable Indebtedness relating to any transaction,
 - (B) Capitalized Leases and other Indebtedness financing the acquisition, construction, repair, replacement or improvement of fixed or capital assets, whether through the direct purchase of assets or the Equity Interests of any Person owning such assets, so long as such Indebtedness is incurred concurrently with, or within two-hundred and seventy days after, the applicable acquisition, construction, repair, replacement or improvement and
 - (C) Indebtedness arising from the conversion of obligations of the Borrower or any Restricted Subsidiary under or pursuant to any “synthetic lease” transactions to Indebtedness of the Borrower or such Restricted Subsidiary;
- provided*** that the aggregate principal amount of such Indebtedness at the time any such Indebtedness is incurred pursuant to this **Section 7.03(d)** shall not exceed the greater of (I) 40.00% of Closing Date EBITDA and (II) 40.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination, in each case determined at the time of incurrence,
- (ii) Attributable Indebtedness incurred in connection with a Sale Leaseback Transaction otherwise permitted hereunder and
 - (iii) any Permitted Refinancing of any Indebtedness incurred under this **Section 7.03(d)**; ***provided*** that for the purposes of determining compliance with this **Section 7.03(d)**, any lease that is not treated under GAAP as a capital lease at the time such lease is executed but is subsequently treated under GAAP as a capitalized lease as the result of a change in GAAP (or interpretations thereof) after the Closing Date shall not be treated as Indebtedness;
- (e) Indebtedness of the Borrower or any of the Restricted Subsidiaries owing to the Borrower or any other Restricted Subsidiary; ***provided*** that all such Indebtedness of any Loan Party

owed to any Restricted Subsidiary that is not a Loan Party shall be subject to the Global Intercompany Note (but only to the extent permitted by applicable Law);

(f) Indebtedness in respect of (i) Obligations under Secured Hedge Agreements, (ii) obligations under Secured Hedge Agreements (as defined in the Term Loan Credit Agreement) and (iii) Hedge Agreements designed to hedge against the Borrower's or any Restricted Subsidiary's exposure to interest rates, foreign exchange rates or commodities pricing risks, in each case of **clauses (i)** through **(iii)**, incurred not for speculative purposes, and Guarantees thereof;

(g) (i) Indebtedness incurred by a Non-Loan Party in an aggregate amount which does not exceed the greater of (A) 30.00% of Closing Date EBITDA and (B) 30.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination and

(ii) Indebtedness that is recourse only to Excluded Assets in an aggregate amount which does not exceed the fair market value of such Excluded Assets at the time such Indebtedness is incurred;

(h) Credit Agreement Refinancing Indebtedness and any Permitted Refinancing thereof;

(i) Incremental Equivalent Debt and any Permitted Refinancing thereof;

(j) Permitted Ratio Debt and any Permitted Refinancing thereof;

(k) Contribution Indebtedness and any Permitted Refinancing thereof;

(l) Indebtedness,

(i) of any Person that becomes a Restricted Subsidiary after the Closing Date pursuant to an Investment or other Acquisition Transaction permitted hereunder, which Indebtedness is existing at the time such Person becomes a Restricted Subsidiary and is not incurred in contemplation of such Person becoming a Restricted Subsidiary that is non-recourse to (and is not assumed by any of) the Borrower or any Restricted Subsidiary (other than any Subsidiary of such Person that is a Subsidiary on the date such Person becomes a Restricted Subsidiary after the Closing Date) and is either (A) unsecured or (B) secured only by the assets of such Restricted Subsidiary by Liens permitted under **Section 7.01**; and

(ii) any Permitted Refinancing of the foregoing;

(m) Indebtedness incurred in connection with a Permitted Acquisition, Acquisition Transaction or Investment expressly permitted hereunder or any Disposition, in each case to the extent constituting indemnification obligations or obligations in respect of purchase price (including earn-outs, seller notes and purchase price adjustments) or other similar adjustments;

(n) Indebtedness representing deferred compensation to employees of the Borrower and its Subsidiaries incurred in the ordinary course of business;

(o) Indebtedness consisting of obligations of the Borrower and the Restricted Subsidiaries under deferred compensation or other similar arrangements with employees incurred by such Person in connection with the Transactions, Permitted Acquisitions, Acquisition Transaction or any Investment expressly permitted hereunder (other than pursuant to **Section 7.02(o)**);

(p) Indebtedness to current or former officers, directors, managers, consultants, and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of the Borrower permitted by **Section 7.06**;

(q) Indebtedness in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments issued or created in the ordinary course of business, including such Indebtedness or other obligations that is consistent with past practices in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims and letters of credit that are cash collateralized;

(r) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, incurred in the ordinary course of business;

(s) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of the Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case, in the ordinary course of business or consistent with past practices;

(t) Indebtedness incurred by a Securitization Subsidiary in a Qualified Securitization Financing that is not recourse (except for Standard Securitization Undertakings) to the Borrower or any other Loan Party;

(u) (i) Indebtedness in respect of letters of credit issued for the account of the Borrower or any Restricted Subsidiary so long as (A) such Indebtedness is not secured by any Lien on Collateral other than Permitted Liens and (B) the aggregate face amount of such letters of credit does not exceed the greater of (I) 10.00% of Closing Date EBITDA and (II) 10.00% of TTM Consolidated Adjusted EBITDA, determined at the time of issuance of such letter of credit and

(ii) Indebtedness in respect of letters of credit that are fully cash collateralized;

(v) (i) obligations in respect of Cash Management Obligations, (ii) Cash Management Obligations (as defined in the Term Loan Credit Agreement) and (iii) other Indebtedness in respect of netting services, automatic clearinghouse arrangements, overdraft protections, employee credit card programs and other cash management and similar arrangements, in each case of **clauses (i) through (iii)**, incurred in the ordinary course of business or consistent with past practices and any Guarantees thereof;

(w) Guarantees in respect of Indebtedness of the Borrower or any of the Restricted Subsidiaries otherwise permitted hereunder; **provided** that (A) no Guarantee by any Restricted Subsidiary of any Junior Financing shall be permitted unless such Restricted Subsidiary shall have also provided a Guarantee of the Obligations substantially on the terms set forth in the Guaranty and (B) if the Indebtedness being guaranteed is subordinated in right of payment to the Obligations, such Guarantee shall be subordinated to the Guaranty in right of payment on terms at least as favorable to the Lenders as those contained in the subordination terms with respect to such Indebtedness;

(x) Indebtedness incurred on behalf of, or representing Guarantees of Indebtedness of, any Joint Ventures in an aggregate principal amount not to exceed the greater of (A) 25.00% of Closing Date EBITDA and (B) 25.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination, determined at the time of incurrence, and any Permitted Refinancing of the foregoing;

(y) Indebtedness in an aggregate principal amount at any time outstanding not to exceed the sum of the greater of (A) 50.00% of Closing Date EBITDA and (B) 50.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination, determined at the time of incurrence, and any Permitted Refinancing of the foregoing;

(z) Indebtedness consisting of unsecured Indebtedness; **provided** that (i) the Payment Conditions are satisfied (after giving Pro Forma Effect to such Indebtedness and the use of proceeds thereof), (ii) such Indebtedness does not mature on or prior to the date that is 91 days after the Latest Maturity Date and (iii) no amortization payments are made in cash on such Indebtedness; and

(aa) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in **clauses (a)** through **(z)** above.

For purposes of determining compliance with this **Section 7.03**, in the event that an item of Indebtedness (or any portion thereof) meets the criteria of more than one of the categories set forth above, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such item of Indebtedness (or any portion thereof) in any manner that complies with this covenant on the date such Indebtedness is incurred or such later time, as applicable; **provided** that all Indebtedness under (a) the Loan Documents will be deemed to have been incurred in reliance on the exception in **Section 7.03(a)** and **(b)** the Term Loan Credit Agreement on the Closing Date will be deemed incurred in reliance on the exception in **Section 7.03(b)**, and shall not be permitted to be reclassified pursuant to this paragraph.

For purposes of determining compliance with any Dollar-denominated (or percentage of TTM Consolidated Adjusted EBITDA, if greater) restriction on the incurrence of Indebtedness, the Dollar equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed or first incurred (whichever yields the lower Dollar equivalent), in the case of revolving credit debt; **provided** that if such Indebtedness

is incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable Dollar-denominated (or percentage of TTM Consolidated Adjusted EBITDA, if greater) restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar-denominated (or percentage of TTM Consolidated Adjusted EBITDA, if greater) restriction will be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced (plus unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses in connection therewith).

The accrual of interest and the accretion of accreted value and the payment of interest in the form of additional Indebtedness shall not be deemed to be an incurrence of Indebtedness for purposes of this **Section 7.03**. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date shall be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP.

Section 7.04 Fundamental Changes. Merge, dissolve, liquidate, consolidate or amalgamate with or into another Person, or effect a Division, except that:

- (a) Any Restricted Subsidiary may merge, amalgamate or consolidate with the Borrower (including a merger or amalgamation, the purpose of which is to reorganize the Borrower into a new jurisdiction); **provided** that:
 - (i) the Borrower shall be the continuing or surviving Person; and
 - (ii) such merger, amalgamation or consolidation does not result in the Borrower ceasing to be organized under the Laws of the United States, any state thereof or the District of Columbia; and
- (b) any Restricted Subsidiary may merge, amalgamate or consolidate with or into any other Restricted Subsidiary or liquidate or dissolve;
- (c) any merger or amalgamation the purpose of which is to reincorporate or reorganize a Restricted Subsidiary in another jurisdiction shall be permitted;
- (d) any Restricted Subsidiary may liquidate or dissolve or change its legal form; **provided**
 - (i) no Event of Default shall result therefrom and
 - (ii) the surviving Person (or the Person who receives the assets of such dissolving or liquidated Restricted Subsidiary) shall be a Restricted Subsidiary;
- (e) so long as no Default exists or would result therefrom, the Borrower may merge, amalgamate or consolidate with any other Person; **provided** that:
 - (i) the Borrower shall be the continuing or surviving corporation; or

(ii) if the Person formed by or surviving any such merger, amalgamation or consolidation is not the Borrower (any such Person, the “**Successor Borrower**”);

(a) the Successor Borrower shall be an entity organized or existing under the laws of the United States, any state thereof or the District of Columbia;

(b) the Successor Borrower shall expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent;

(c) each Guarantor, unless it is the other party to such merger, amalgamation or consolidation, shall have by a supplement to the Guaranty confirmed that its Guarantee of the Obligations shall apply to the Successor Borrower’s obligations under this Agreement;

(d) each Loan Party, unless it is the other party to such merger, amalgamation or consolidation, shall have by a supplement to the Security Agreement confirmed that its obligations thereunder shall apply to the Successor Borrower’s obligations under this Agreement and the direct parent of such Person shall pledge 100.00% of the Equity Interests of such Person to the Administrative Agent as Collateral to secure the Obligations; and

(e) the Borrower shall have delivered to the Administrative Agent an officer’s certificate and an opinion of counsel, each stating that such merger, amalgamation or consolidation and such supplement to this Agreement or any Collateral Document comply with this Agreement, and, with respect to such opinion of counsel only, including customary organization, due execution, no conflicts and enforceability opinions to the extent reasonably requested by the Administrative Agent;

it being agreed that if the foregoing are satisfied, the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement;

(f) any Restricted Subsidiary may merge, amalgamate or consolidate with any other Person in order to effect an Investment, Acquisition Transaction or other transaction not prohibited by the Loan Documents (other than any transaction pursuant to **Section 7.02(o)**);

(g) any Loan Party or any Restricted Subsidiary may conduct a Division that produces two or more surviving or resulting Persons; **provided** that

(i) if a Division is conducted by the Borrower, then each surviving or resulting Person shall constitute a “**Borrower**” for all purposes of the Loan Documents (unless the Administrative Agent otherwise consents in its reasonable discretion) and shall remain jointly and severally liable for all Obligations (other than Excluded Swap Obligations, where applicable) of the Borrower immediately prior to such Division and otherwise comply with **Section 7.04(e)**;

(ii) [reserved]; and

(iii) if a Division is conducted by a Loan Party other than the Borrower, then each surviving or resulting Person of such Division shall also be a Loan Party unless and to the extent any such surviving or resulting Loan Party is the subject of a Disposition permitted pursuant to **Section 7.05** (other than **Section 7.05(e)**) or otherwise would constitute an Excluded Subsidiary; *provided further* that such surviving or resulting Person not becoming a Loan Party and the assets and property of such surviving or resulting Person not becoming Collateral shall, in each case, be treated as an Investment and shall be permitted under this **Section 7.04(g)(iii)** solely to the extent permitted under **Section 7.02**; and

(h) as long as no Default exists or would result therefrom, a merger, amalgamation, dissolution, liquidation, consolidation or Disposition, the purpose of which is to effect a Disposition permitted pursuant to **Section 7.05** (other than **Section 7.05(e)**).

Notwithstanding anything herein to the contrary, in the event of any merger, dissolution, liquidation, consolidation, amalgamation or Division of any Loan Party or a Restricted Subsidiary effected in accordance with this **Section 7.04**, the Borrower shall or shall cause, with respect to each surviving or continuing Restricted Subsidiary (a) promptly deliver or cause to be delivered to the Administrative Agent for further distribution by the Administrative Agent to each Lender (i) such information and documentation reasonably requested by the Administrative Agent or any Lender in order to comply with applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act and (ii) a Beneficial Ownership Certification and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent or Collateral Agent may reasonably request in order to perfect or continue the perfection of the Liens granted or purported to be granted by the Collateral Documents in accordance with **Section 6.11** and as promptly as practicable

Section 7.05 Dispositions. Make any Disposition, except:

(a) Dispositions of obsolete, damaged, worn out, used or surplus property (including for purposes of recycling), whether now owned or hereafter acquired and Dispositions of property of the Borrower and the Restricted Subsidiaries that is no longer used or useful in the conduct of the business or economically practicable or commercially desirable to maintain;

(b) Dispositions of property in the ordinary course of business;

(c) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property; *provided* that to the extent the property being transferred constitutes Collateral such replacement property shall constitute Collateral;

(d) Dispositions of property to the Borrower or a Restricted Subsidiary;

- (e) Dispositions permitted by **Section 7.02** (other than **Section 7.02(o)**), **Section 7.04** (other than **Section 7.04(h)**) and **Section 7.06** (other than **Section 7.06(d)**) and Permitted Liens;
- (f) Dispositions of property pursuant to Sale Leaseback Transactions; *provided* that
- (i) no Event of Default exists or would result therefrom (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Event of Default exists) and
- (ii) such Disposition shall be for no less than the fair market value of such property at the time of such Disposition;
- (g) Dispositions of Cash Equivalents; *provided* that such Disposition shall be for no less than the fair market value of such property at the time of such Disposition;
- (h) leases, subleases, licenses or sublicenses (including the provision of software under an open source license), which do not materially interfere with the business of the Borrower and the Restricted Subsidiaries, taken as a whole; *provided* that such Disposition shall be for no less than the fair market value of such property at the time of such Disposition;
- (i) Dispositions of property subject to Casualty Events upon receipt of the net cash proceeds of such Casualty Event;
- (j) Dispositions; *provided* that:
- (i) at the time of such Disposition (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Default exists), no Default shall exist or would result from such Disposition;
- (ii) with respect to any Disposition pursuant to this **clause (j)** for a purchase price in excess of the greater of (A) 10.00% of Closing Date EBITDA and (B) 10.00% of TTM Consolidated Adjusted EBITDA as of the date of the Disposition, the Borrower or any of the Restricted Subsidiaries shall receive not less than 75.00% of such consideration in the form of cash or Cash Equivalents; *provided, however*, that for the purposes of this **clause (ii)** each of the following shall be deemed to be cash;
- (a) any liabilities (as shown on the Borrower's or such Restricted Subsidiary's most recent balance sheet provided hereunder or in the footnotes thereto) of the Borrower or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the payment in cash of the Obligations, that are assumed by the transferee with respect to the applicable Disposition and for which the Borrower and all of the Restricted Subsidiaries shall have been validly released by all applicable creditors in writing;
- (b) any securities received by such Borrower or Restricted Subsidiary from such transferee that are converted by such Borrower or Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received)

within one hundred and eighty days following the closing of the applicable Disposition; and

(c) any Designated Non-Cash Consideration received in respect of such Disposition having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this **clause (C)** that is at that time outstanding, not in excess of the greater of (I) 20.00% of Closing Date EBITDA and (II) 20.00% of TTM Consolidated Adjusted EBITDA as of the date of the Disposition, with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value; and

(iii) such Disposition shall be for no less than the fair market value of such property at the time of such Disposition

(this **clause (j)**, the “*General Asset Sale Basket*”);

(k) Dispositions of Investments in Joint Ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the Joint Venture parties set forth in joint venture arrangements and similar binding arrangements;

(l) Dispositions or discounts of accounts receivable and related assets in connection with the collection, compromise, settlement or factoring thereof; **provided** that any such dispositions in connection with factoring facilities shall not exceed \$75,000,000 per annum;

(m) Dispositions (including issuances or sales) of Equity Interests in, or Indebtedness owing to, or of other securities of, an Unrestricted Subsidiary;

(n) Dispositions to the extent of any exchange of like property (excluding any boot thereon permitted by such provision) for use in any business conducted by the Borrower or any of the Restricted Subsidiaries to the extent allowable under Section 1031 of the Code (or comparable or successor provision);

(o) Dispositions in connection with the unwinding of any Hedge Agreement;

(p) Dispositions by the Borrower or any Restricted Subsidiary of assets in connection with the closing or sale of a facility in the ordinary course of business of the Borrower and its Restricted Subsidiaries, which consist of fee or leasehold interests in the premises of such facility, the equipment and fixtures located at such premises and the books and records relating exclusively and directly to the operations of such facility; **provided** that as to each and all such sales and closings, (i) no Event of Default shall result therefrom and (ii) such sale shall be on commercially reasonable prices and terms in a bona fide arm’s-length transaction;

(q) Dispositions (including bulk sales) of the inventory of a Loan Party and not in the ordinary course of business in connection with facility closings, at arm’s length;

(r) Disposition of Securitization Assets to a Securitization Subsidiary in connection with a Qualified Securitization Financing; **provided** that such Disposition shall be for no less than the fair market value of such property at the time of such Disposition;

(s) the lapse, abandonment or discontinuance of the use or maintenance of any Intellectual Property if previously determined by the Borrower or any Restricted Subsidiary in its reasonable business judgment that such lapse, abandonment or discontinuance is desirable in the conduct of its business;

(t) Disposition of any property or asset with a and for fair market value not to exceed the greater of (A) 15.00% of Closing Date EBITDA and (B) 15.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of measurement in any fiscal year in the aggregate for all such transactions in any fiscal year, with unused amounts in any fiscal year being carried over to succeeding fiscal years;

(u) Disposition of assets acquired in a Permitted Acquisition or other Investment permitted hereunder that the Borrower determines will not be used or useful in the business of the Borrower and its Subsidiaries;

(v) Dispositions of Excluded Assets by Non-Loan Parties and Dispositions of Excluded Assets by Loan Parties for fair market value; and

(w) Disposition of Equity Interests in A Place for Rover, Inc., or any successor thereto.

To the extent any Collateral is Disposed of as expressly permitted by this **Section 7.05** to any Person other than a Loan Party, such Collateral shall be sold free and clear of the Liens created by the Loan Documents, and, if requested by the Administrative Agent, upon the certification by the Borrower that such Disposition is permitted by this Agreement, and without limiting the provisions of **Section 10.11** the Administrative Agent shall be authorized to, and shall, take any actions reasonably requested by the Borrower in order to effect the foregoing (and the Lenders hereby authorize and direct the Administrative Agent to conclusively rely on any such certification by the Borrower in performing its obligations under this sentence).

Notwithstanding anything to the contrary, any direct or indirect Disposition of assets included within the Borrowing Base outside of the ordinary course of business (including by way of Restricted Payment, Junior Debt Prepayment or Investment in a Person that is not a Loan Party and any Loan Party ceasing to be a Guarantor) and in excess of 10% of the Borrowing Base prior to giving effect to such Disposition shall be subject to deliver of an updated Borrowing Base Certificate demonstrating, after giving pro forma effect to such Disposition, Total Utilization of Revolving Commitments does not exceed the Line Cap.

Notwithstanding anything to the contrary contained herein, in no event shall the Borrower or any Restricted Subsidiary (a) consummate any disposition of any material intellectual property to any Unrestricted Subsidiary, (b) contribute or otherwise make any Investment of any material intellectual property to or in any Unrestricted Subsidiary or (c) designate any Subsidiary as an Unrestricted Subsidiary if such Subsidiary owns any material intellectual property; **provided** that the foregoing **clauses (a), (b) and (c)** shall not apply to transactions that have a bona fide business purpose so long as such transactions are not undertaken to facilitate a financing (including a debtor

in possession financing) or a Restricted Payment or undertaken in connection with a liability management transaction.

Section 7.06 Restricted Payments. Make, directly or indirectly, any Restricted Payment, except:

(a) each Restricted Subsidiary may make Restricted Payments to the Borrower and to any other Restricted Subsidiaries (and, in the case of a Restricted Payment by a non-wholly owned Restricted Subsidiary, to the Borrower or any such other Restricted Subsidiaries and to each other owner of Equity Interests of such Restricted Subsidiary ratably according to their relative ownership interests of the relevant class of Equity Interests or as otherwise required by the applicable Organization Documents);

(b) the Borrower and each of the Restricted Subsidiaries may declare and make Restricted Payments payable in the form of Equity Interests (other than Disqualified Equity Interests not otherwise permitted to be incurred under Section 7.03) of such Person;

(c) [reserved];

(d) to the extent constituting Restricted Payments, the Borrower and the Restricted Subsidiaries may enter into and consummate transactions expressly permitted by any provision of Section 7.02 (other than Section 7.02(o)), 7.04 (other than a merger, amalgamation or consolidation involving the Borrower) or 7.07 (other than Section 7.07(a), (j) or (k));

(e) Restricted Payments in respect of the repurchase of Equity Interests in the Borrower, any Restricted Subsidiary that occur upon or in connection with the exercise of stock options or warrants or similar rights if such Restricted Payments represent a portion of the exercise price of such options or warrants or similar rights or tax withholding obligations with respect thereto;

(f) Restricted Payments of Equity Interests in, Indebtedness owing from and/or other securities of or Investments in, any Unrestricted Subsidiaries (other than any Unrestricted Subsidiaries the assets of which consist solely of cash or Cash Equivalents received from an Investment by the Borrower and/or any Restricted Subsidiary into it);

(g) the Borrower may pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests of the Borrower held by any Management Stockholder, including pursuant to any employee or director equity plan, employee or director stock option or profits interest plan or any other employee or director benefit plan or any agreement (including any separation, stock subscription, shareholder or partnership agreement) with any employee, director, consultant or distributor of the Borrower or any of its Subsidiaries; *provided*, the aggregate Restricted Payments made pursuant to this Section 7.06(g) after the Closing Date together with the aggregate amount of loans and advances to the Borrower made pursuant to Section 7.02(j) in lieu of Restricted Payments permitted by this clause (g) shall not exceed:

(i) the greater of (A) 20.00% of Closing Date EBITDA and (B) 20.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of measurement in any calendar

year, with unused amounts in any calendar year being carried over to the next two succeeding calendar years; plus

(ii) an amount not to exceed the cash proceeds of key man life insurance policies received by the Borrower or the Restricted Subsidiaries after the Closing Date; plus

(iii) to the extent contributed in cash to the common Equity Interests of the Borrower and Not Otherwise Applied, the proceeds from the sale of Equity Interests of the Borrower to a Person that is or becomes a Management Stockholder that occurs after the Closing Date; plus

(iv) the amount of any cash bonuses or other compensation otherwise payable to any future, present or former Company Person that are foregone in return for the receipt of Equity Interests of the Borrower or any Restricted Subsidiary; plus

(v) payments made in respect of withholding or other similar taxes payable upon repurchase, retirement or other acquisition or retirement of Equity Interests of the Borrower or its Subsidiaries or otherwise pursuant to any employee or director equity plan, employee or director stock option or profits interest plan or any other employee or director benefit plan or any agreement;

(h) [Reserved];

(i) Restricted Payments (i) made in connection with the payment cash in lieu of fractional Equity Interests in connection with any dividend, split or combination thereof or any Permitted Acquisition or other transaction permitted by the Loan Documents or (ii) to honor any conversion request by a holder of convertible Indebtedness and to make cash payments in lieu of fractional shares in connection therewith;

(j) the declaration and payment of dividends on the Borrower's common stock, not to exceed an amount *per annum* equal to the greater of (A) the sum of (i) 6.00% of the net proceeds of the Borrower's initial public offering and (ii) any follow on primary offering received by the Borrower and (B) an amount equal to 7.00% of the Market Capitalization of the Borrower;

(k) repurchases of Equity Interests (i) deemed to occur on the exercise of options by the delivery of Equity Interests in satisfaction of the exercise price of such options or (ii) in consideration of withholding or similar Taxes payable by any future, present or former employee, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing), including deemed repurchases in connection with the exercise of stock options or the vesting of any equity awards;

(l) payments or distributions to satisfy dissenters rights (including in connection with or as a result of the exercise of appraisal rights and the settlement of any claims or actions, whether actual, contingent or potential) pursuant to or in connection with a merger, amalgamation, consolidation, transfer of assets or other transaction permitted by the Loan Documents;

(m) payments or distributions of a Restricted Payment within 60 days after the date of declaration thereof if at the date of declaration such Restricted Payment would have been permitted hereunder;

(n) Restricted Payments (not consisting of cash or Cash Equivalents) made in lieu of fees or expenses (including by way of discount), in each case in connection with any Qualified Securitization Financing;

(o) the Borrower may

(i) redeem, repurchase, retire or otherwise acquire in whole or in part any Equity Interests of the Borrower or any Restricted Subsidiary (“**Treasury Equity Interests**”), in exchange for, or with the proceeds (to the extent contributed to the Borrower substantially concurrently) of the sale or issuance (other than to the Borrower or any Restricted Subsidiary) of, other Equity Interests or rights to acquire its Equity Interests (“**Refunding Equity Interests**”) and

(ii) declare and pay dividends on any Treasury Equity Interests out of any such proceeds;

(p) redemptions in whole or in part of any of its Equity Interests for another class of its Equity Interests (other than Disqualified Equity Interests, except to the extent issued by the Borrower to a Restricted Subsidiary) or with proceeds from substantially concurrent equity contributions or issuances of new Equity Interests (other than Disqualified Equity Interests, except to the extent issued by the Borrower to a Restricted Subsidiary);

(q) Restricted Payments constituting or otherwise made in connection with or relating to any Permitted Reorganization; **provided** that if immediately after giving Pro Forma Effect to any such Permitted Reorganization and the transactions to be consummated in connection therewith, any distributed asset ceases to be owned by the Borrower or another Restricted Subsidiary (or any entity ceases to be a Restricted Subsidiary), the applicable portion of such Restricted Payment must be otherwise permitted under another provision of this **Section 7.06** (and constitute utilization of such other Restricted Payment exception or capacity);

(r) Restricted Payments so long as the Payment Conditions are satisfied (after giving Pro Forma Effect to such Restricted Payment); and

(s) the Borrower may make Restricted Payments in an aggregate amount not to exceed the greater of (A) 25.00% of Closing Date EBITDA and (B) 25.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination; **provided** that no Event of Default shall have occurred and be continuing or would result therefrom; and

The amount set forth in **Section 7.06(s)** may, in lieu of Restricted Payments, be utilized by the Borrower or any Restricted Subsidiary to (i) make or hold any Investments without regard to **Section 7.02** or (ii) prepay, repay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof any Junior Financing without regard to **Section 7.09(a)**.

The amount of any Restricted Payment at any time shall be the amount of cash and the fair market value of other property subject to the Restricted Payment at the time such Restricted Payment is made. For purposes of determining compliance with this Section 7.06, in the event that any Restricted Payment (or any portion thereof) meets the criteria of more than one of the categories set forth above, the Borrower may, in its sole discretion, at the time of such Restricted Payment is made, divide, classify or reclassify, or at any later time divide, classify, or reclassify, such Restricted Payment (or any portion thereof) in any manner that complies with this covenant on the date such Restricted Payment is made or such later time, as applicable.

Section 7.07 Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate of the Borrower, other than:

- (a) transactions between or among the Borrower or any of the Restricted Subsidiaries or any entity that becomes a Restricted Subsidiary as a result of such transaction;
- (b) transactions on terms substantially as favorable to the Borrower or such Restricted Subsidiary as would be obtainable by the Borrower or such Restricted Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate (as determined by the Borrower in good faith);
- (c) the Transactions and the payment of fees and expenses (including the Transaction Expenses) related to the Transactions on or about the Closing Date to the extent such fees and expenses are disclosed to the Administrative Agent prior to the Closing Date;
- (d) the issuance or transfer of Equity Interests of the Borrower to any Affiliate of the Borrower or any former, current or future officer, director, manager, employee or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) of the Borrower or any of its Subsidiaries;
- (e) [reserved];
- (f) employment and severance arrangements and confidentiality agreements among the Borrower and the Restricted Subsidiaries and their respective officers and employees in the ordinary course of business and transactions pursuant to stock option, profits interest and other equity plans and employee benefit plans and arrangements;
- (g) the licensing of trademarks, copyrights or other Intellectual Property in the ordinary course of business to permit the commercial exploitation of Intellectual Property between or among Affiliates and Subsidiaries of the Borrower;
- (h) the payment of customary fees and reasonable out-of-pocket costs to, and indemnities provided on behalf of, directors, officers, employees and consultants of the Borrower and the Restricted Subsidiaries in the ordinary course of business to the extent attributable to the ownership or operation of the Borrower and the Restricted Subsidiaries;
- (i) any agreement, instrument or arrangement as in effect as of the Closing Date or any amendment thereto (so long as any such amendment is not adverse to the Lenders in any material respect as compared to the applicable agreement as in effect on the Closing Date);

(j) Restricted Payments permitted under Section 7.06 and Investments permitted under Section 7.02;

(k) so long as no Specified Event of Default shall have occurred and be continuing or would result therefrom, customary payments by the Borrower and any of the Restricted Subsidiaries to the Sponsors made for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities (including in connection with acquisitions or divestitures), which payments are approved by a majority of the members of the Board of Directors of the Borrower in good faith or a majority of the disinterested members of the Board of Directors of the Borrower in good faith; **provided** that payments that would otherwise be permitted to be made under this Section 7.07(k) but for a Specified Event of Default may accrue during the continuance of such Event of Default and be paid when such Event of Default is no longer continuing;

(l) transactions in which the Borrower or any of the Restricted Subsidiaries, as the case may be, delivers to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (b) of this Section 7.07 (without giving effect to the parenthetical phrase at the end thereof);

(m) any transaction with consideration valued at less than the greater of (A) 10.00% of Closing Date EBITDA and (B) 10.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination;

(n) investments by a Sponsor in securities of the Borrower or Indebtedness of the Borrower or any of the Restricted Subsidiaries so long as (A) the investment is being offered generally to other investors on the same or more favorable terms and (B) the investment constitutes less than 5.00% of the proposed or outstanding issue amount of such class of securities; **provided**, that any investments in debt securities by any Affiliated Debt Funds shall not be subject to the limitation in this clause (B);

(o) payments to or from, and transactions with, Joint Ventures in the ordinary course of business;

(p) any Disposition of Securitization Assets or related assets in connection with any Qualified Securitization Financing;

(q) the payment of reasonable out-of-pocket costs and expenses relating to registration rights and indemnities provided to shareholders of the Borrower pursuant to the stockholders agreement or the registration and participation rights agreement entered into on the Closing Date in connection therewith;

(r) the payment of any dividend or distribution within sixty days after the date of declaration thereof, if at the date of declaration (i) such payment would have complied with the provisions of this Agreement and (ii) no Event of Default occurred and was continuing;

(s) transactions between the Borrower or any of the Subsidiaries and any Person, a director of which is also a director of the Borrower (subject to the *bona fide* related party transaction policies of the Borrower and its Subsidiaries);

(t) payments, loans (or cancellation of loans) or advances to employees or consultants that are (i) approved by a majority of the disinterested members of the Board of Directors of the Borrower in good faith, (ii) made in compliance with applicable Law and (iii) otherwise permitted under this Agreement; and

(u) transactions

(i) with the Borrower in its capacity as a party to any Loan Document or to any agreement, document or instrument governing or relating to (A) any Indebtedness permitted to be incurred pursuant to **Section 7.03** (including Permitted Refinancings thereof) or (B) any other agreements contemplated thereby or any agreement, document or instrument governing or relating to any Permitted Acquisition (whether or not consummated) and

(ii) with any Affiliate or branch in its capacity as a Lender party to any Loan Document or party to any agreement, document or instrument governing or relating to any Indebtedness permitted to be incurred pursuant to **Section 7.03** (including Permitted Refinancings thereof) to the extent such Affiliate or branch is being treated no more favorably than all other Lenders or lenders thereunder.

Section 7.08 Negative Pledge. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that prohibits or restricts the ability of any Restricted Subsidiary (other than an Excluded Subsidiary)

(i) that is not a Loan Party, to make dividends or distributions to (directly or indirectly), or to make or repay loans or advances to, any Loan Party or

(ii) to create, incur, assume or suffer to exist Liens on property of such Person (other than Excluded Assets) for the benefit of the Lenders to secure the Obligations under the Loan Documents (other than Incremental Facilities that are not intended to be secured on a first lien basis);

provided that the foregoing shall not apply to Contractual Obligations that:

(a) exist on the Closing Date, including Contractual Obligations governing Indebtedness incurred on the Closing Date to finance the Transactions and any Permitted Refinancing thereof or other Contractual Obligations executed on the Closing Date in connection with the Transactions;

(b) are binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary, so long as such Contractual Obligations were not entered into in contemplation of such Person becoming a Restricted Subsidiary or binding with respect to any asset at the time such asset was acquired;

(c) are Contractual Obligations of a Restricted Subsidiary that is not a Loan Party or to the extent applicable only to Excluded Assets;

(d) are customary restrictions that arise in connection with (A) any Lien permitted by **Section 7.01** and relate to the property subject to such Lien or (B) any Disposition permitted by **Section 7.05** applicable pending such Disposition solely to the assets (including Equity Interests) subject to such Disposition;

(e) are joint venture agreements and other similar agreements applicable to Joint Ventures and applicable solely to such Joint Venture;

(f) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under **Section 7.03** but solely to the extent any negative pledge relates to the property financed by or the subject of or that secures such Indebtedness and the proceeds and products thereof;

(g) are restrictions in leases, subleases, licenses, sublicenses or agreements governing a disposition of assets, trading, netting, operating, construction, service, supply, purchase, sale or other agreements entered into in the ordinary course of business so long as such restrictions relate to the assets subject thereto;

(h) comprise restrictions imposed by any agreement relating to secured Indebtedness permitted pursuant to **Section 7.03** to the extent that such restrictions apply only to the property or assets securing such Indebtedness;

(i) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest;

(j) are customary provisions restricting assignment of any agreement entered into in the ordinary course of business;

(k) are restrictions on cash or other deposits imposed by customers or trade counterparties under contracts entered into in the ordinary course of business;

(l) arise in connection with cash or other deposits permitted under **Section 7.01**;

(m) comprise restrictions that are, taken as a whole, in the good faith judgment of the Borrower (i) no more restrictive with respect to the Borrower or any Restricted Subsidiary than customary market terms for Indebtedness of such type or (ii) no more restrictive than the restrictions contained in this Agreement, or not reasonably anticipated to materially and adversely affect the Loan Parties' ability to make any payments required hereunder;

(n) apply by reason of any applicable Law, rule, regulation or order or are required by any Governmental Authority having jurisdiction over the Borrower or any Restricted Subsidiary;

(o) customary restrictions contained in Indebtedness permitted to be incurred pursuant to **Section 7.03(h), (i), (j), (k), (l), (m), (x), or (y)**;

- (p) Contractual Obligations that are subject to the applicable override provisions of the UCC;
- (q) customary provisions (including provisions limiting the Disposition, distribution or encumbrance of assets or property) included in sale leaseback agreements or other similar agreements;
- (r) net worth provisions contained in agreements entered into by the Borrower or any Restricted Subsidiary, so long as the Borrower has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of the Borrower or such Restricted Subsidiary to meet its ongoing obligations;
- (s) restrictions arising in any agreement relating to (i) any Cash Management Obligation to the extent such restrictions relate solely to the cash, bank accounts or other assets or activities subject to the applicable Cash Management Services, (ii) any treasury arrangements and (iii) any Hedge Agreement;
- (t) restrictions on the granting of a security interest in Intellectual Property contained in licenses, sublicenses or cross-licenses by the Borrower or any Restricted Subsidiary of such Intellectual Property, which licenses, sublicenses and cross-licenses were entered into in the ordinary course of business; and
- (u) other restrictions or encumbrances imposed by any amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing of the contracts, instruments or obligations referred to in the preceding clauses of this **Section 7.08**; *provided* that no such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing is, in the good faith determination of the Borrower, materially more restrictive with respect to such encumbrances and other restrictions, taken as a whole, than those in effect prior to the relevant amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

Section 7.09 Junior Debt Prepayments; Amendments to Junior Financing Documents.

- (a) **Prepayments of Junior Financing.** Prepay, repay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof any Junior Financing (any such prepayment, repayment, redemption, purchase, defeasance or satisfaction, a “*Junior Debt Repayment*”), except:
 - (i) Junior Debt Repayments with the proceeds of, or in exchange for, any (A) Permitted Refinancing or (B) other Junior Financing or Junior Lien Debt secured by Permitted Liens (*provided* that such incurrence will thereafter count in the calculation of any remaining basket capacity thereunder, while such Indebtedness remains outstanding);
 - (ii) Junior Debt Repayments
 - (a) made with Qualified Equity Interests of the Borrower, with the proceeds of an issuance of any such Equity Interests or with the proceeds of a contribution

to the capital of the Borrower after the Closing Date that is Not Otherwise Applied or

- (b) consisting of the conversion of any Junior Financing to Equity Interests;
- (iii) Junior Debt Repayments of Indebtedness of the Borrower or any Restricted Subsidiary owed to the Borrower or a Restricted Subsidiary;
- (iv) Junior Debt Repayments of Indebtedness of any Person that becomes a Restricted Subsidiary after the Closing Date in connection with a transaction not prohibited by the Loan Documents;
- (v) Junior Debt Repayments within 60 days of giving notice thereof if at the date of such notice, such payment would have been permitted hereunder;
- (vi) [reserved];
- (vii) Junior Debt Repayments consisting of the payment of regularly scheduled interest and principal payments, payments of fees, expenses, penalty interest and indemnification obligations when due, other than payments prohibited by any applicable subordination provisions;
- (viii) Junior Debt Repayments consisting of a payment to avoid the application of Section 163(e)(5) of the Code (an “*AHYDO Catch Up Payment*”);
- (ix) Junior Debt Repayments so long as the Payment Conditions are satisfied (after giving Pro Forma Effect to any such Junior Debt Repayment); and
- (x) Junior Debt Repayments in an aggregate amount not to exceed the greater of (A) 25.00% of Closing Date EBITDA and (B) 25.00% of TTM Consolidated Adjusted EBITDA on a Pro Forma Basis as of the applicable date of determination.

provided however, that each of the following shall be permitted: payments of regularly scheduled principal and interest on Junior Financing, payments of closing and consent fees related to Junior Financing, indemnity and expense reimbursement payments in connection with Junior Financing, and mandatory prepayments, mandatory redemptions and mandatory purchases, in each case pursuant to the terms of Junior Financing Documentation.

The amount set forth in **Section 7.09(a)(x)** may, in lieu of Junior Debt Repayments be utilized by the Borrower or any Restricted Subsidiary to make or hold any Investments without regard to **Section 7.02**.

The amount of any Junior Debt Repayment at any time shall be the amount of cash and the fair market value of other property used to make the Junior Debt Repayment at the time such Junior Debt Repayment is made. For purposes of determining compliance with this **Section 7.09(a)**, in the event that any prepayment, repayment, redemption, purchase, defeasance or satisfaction (or any portion thereof) meets the criteria of more than one of the categories set forth above, the Borrower may, in its sole discretion, at the time of such prepayment, repayment, redemption,

purchase, defeasance or satisfaction is made, divide, classify, or reclassify, or at any later time divide, classify or reclassify, such prepayment, repayment, redemption, purchase, defeasance or satisfaction (or any portion thereof) in any manner that complies with this covenant on the date it was made or such later time, as applicable.

(b) **Amendments to Junior Financing Documents.** Amend, modify or change in any manner without the consent of the Administrative Agent, any Junior Financing Documentation unless (i) such amendment, modification or change is permitted pursuant to any applicable intercreditor or subordination agreement or (ii) the Borrower determines in good faith that the effect of such amendment, modification or waiver is not, taken as a whole, materially adverse to the interests of the Lenders, in each case, other than as a result of a Permitted Refinancing thereof; *provided* that, in each case, a certificate of the Borrower delivered to the Administrative Agent at least five Business Days prior to such amendment or other modification, together with a reasonably detailed description of such amendment or modification, stating that the Borrower has reasonably determined in good faith that such terms and conditions satisfy such foregoing requirement shall be conclusive evidence that such terms and conditions satisfy such foregoing requirement unless the Administrative Agent notifies the Borrower in writing within such five Business Day period that it disagrees with such determination (including a reasonably detailed description of the basis upon which it disagrees).

Section 7.10 [Reserved].

Section 7.11 **Changes in Fiscal Year.** Make any change in the fiscal year of the Borrower; *provided, however*, that the Borrower may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

ARTICLE VIII. FINANCIAL COVENANT

So long as the Termination Conditions have not been satisfied, the Borrower and each of the Restricted Subsidiaries covenant and agree that:

Section 8.01 **Fixed Charge Coverage Ratio.** Upon the occurrence and during the continuance of a Covenant Trigger Event, the Borrower shall not permit (a) as of the last day of the most recently ended Test Period prior to the occurrence of such Covenant Trigger Event and (b) as of the last day of each Test Period ended thereafter during the continuance of such Covenant Trigger Event, the Fixed Charge Coverage Ratio to be less than 1.00 to 1.00. To the extent required to be tested with respect to any Test Period pursuant to the preceding sentence, compliance with this **Section 8.01** shall be calculated in the Compliance Certificate for the applicable Test Period delivered pursuant to **Section 6.02(a)**.

Section 8.02 **Borrower's Right to Cure.** Notwithstanding anything to the contrary contained in **Section 8.01**, in the event that the Fixed Charge Coverage Ratio is less than the amount set forth in **Section 8.01** on the last day of any applicable Test Period, any equity

contribution (in the form of common equity or other equity that is not a Disqualified Equity Interest) made to the Borrower after the end of the relevant fiscal quarter and on or prior to the day that is ten Business Days after the date on which financial statements are required to be delivered for such Test Period and Not Otherwise Applied (such date, the “*Cure Expiration Date*”) will, at the request of the Borrower, be included in the calculation of Consolidated Adjusted EBITDA solely for the purposes of determining compliance with the financial covenant set forth in **Section 8.01** at the end of such Test Period and any subsequent period that includes a fiscal quarter in such Test Period (any such equity contribution, a “*Specified Equity Contribution*”); *provided* that,

- (a) no Lender shall be required to make any new Credit Extension under a Loan Document after receipt by the Administrative Agent of any Notice of Intent to Cure if the Borrower has not at such time received the proceeds of such Specified Equity Contribution;
- (b) the Borrower shall not be permitted to so request that a Specified Equity Contribution be included in the calculation of Consolidated Adjusted EBITDA with respect to any fiscal quarter unless, after giving effect to such requested Specified Equity Contribution, there would be at least two fiscal quarters in the Relevant Four Fiscal Quarter Period in which no Specified Equity Contribution has been made;
- (c) no more than five Specified Equity Contributions will be made in the aggregate;
- (d) the amount of any Specified Equity Contribution and the use of any proceeds therefrom will be no greater than the amount required to cause the Borrower to be in compliance with **Section 8.01**;
- (e) any proceeds of Specified Equity Contributions will be disregarded for all other purposes under the Loan Documents (including calculating Consolidated Adjusted EBITDA for purposes of determining basket levels, pricing and other items governed by reference to Consolidated Adjusted EBITDA or any ratio-based basket and the other negative covenants); and
- (f) there shall be no reduction in Indebtedness pursuant to a cash netting provision with the proceeds of any Specified Equity Contribution for purposes of determining compliance with the financial covenant set forth in **Section 8.01** for the fiscal quarter for which such Specified Equity Contribution was made.

ARTICLE IX. EVENTS OF DEFAULT AND REMEDIES

Section 9.01 Events of Default. Each of the events referred to in **clauses (a)** through **(j)** of this **Section 9.01** shall constitute an “*Event of Default*”:

- (a) **Non-Payment**. Any Loan Party fails to pay (i) when and as required to be paid pursuant to the terms of this Agreement, any amount of principal of any Loan, or (ii) within five Business Days after the same becomes due, any interest on any Loan or any fee payable pursuant to the terms of a Loan Document; or
- (b) **Specific Covenants**. The Borrower or any Subsidiary or any Subsidiary Guarantor fails to perform:

- (i) any covenant contained in
 - (a) **Section 6.02(f)** (and such default shall not have been remedied or waived
 - (i) within five (5) Business Days or
 - (ii) during the continuance of any period as described in **clauses (1) and (2)** of the first proviso of **Section 6.02(f)**, within three (3) Business Days after the occurrence thereof),
 - (b) **Section 6.03(a)**,
 - (c) **Section 6.05(a)** (solely with respect to the Borrower) or
 - (d) **Article VII**,
 - (ii) the covenant set forth in **Section 8.01** (any such failure to observe the covenant contained in **Section 8.01**, a “*Financial Covenant Event of Default*”), or
 - (iii) any covenant set forth in **Section 6.18**.
- (c) **Other Defaults.** The Borrower or any Subsidiary Guarantor fails to perform or observe any other covenant (not specified in **Section 9.01(a)** or **(b)** above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty days after the receipt by the Borrower of written notice thereof from the Administrative Agent; or
- (d) **Representations and Warranties.** Any representation or warranty made or deemed by any Loan Party in any Loan Document, or in any document required to be delivered pursuant to the terms of a Loan Document shall be untrue in any material respect (or, with respect to any representation or warranty qualified by materiality or “*Material Adverse Effect*,” shall be untrue in any respect) when made or deemed made; *provided* that in the case of any representation and warranty (other than with respect to the Borrowing Base (or any component thereof), on the Borrowing Base Certificate or in **Section 5.20**) made or deemed made after the Closing Date that is capable of being cured, such representation or warranty shall remain untrue (in any material respect or in any respect, as applicable) or uncorrected for a period of thirty days after written notice thereof from the Administrative Agent to the Borrower; or
- (e) **Cross-Default.** The Borrower or any Subsidiary Guarantor,
- (i) fails to make any payment of any principal or interest beyond the applicable grace period, if any, whether by scheduled maturity, required prepayment, acceleration, demand or otherwise, in respect of its Material Indebtedness; or
 - (ii) fails to perform or observe any covenant contained in an agreement governing its Material Indebtedness, or any other event occurs, the effect of which failure or other event is to cause such Material Indebtedness to become due prior to its stated maturity, in each case pursuant to its terms;

provided that (A) this **Section 9.01(e)** shall not apply to any failure if it has been remedied, cured or waived in accordance with the terms of such Material Indebtedness and (B) **Section 9.01(e)(ii)** shall not apply

- (1) to any secured Indebtedness that becomes due as a result of the sale, transfer or other disposition (including as a result of a casualty or condemnation event) of the property or assets securing such Indebtedness;
- (2) to conversion of, or the satisfaction of any condition to the conversion of, any Indebtedness that is convertible or exchangeable for Equity Interests;
- (3) to a customary “change of control” put right in any indenture governing any such Indebtedness in the form of notes; or
- (4) to a refinancing of Indebtedness permitted by this Agreement; or

(f) Insolvency Proceedings, Etc.

(i) Any Loan Party (A) institutes or consents to the institution of any case or proceeding under any Debtor Relief Law, (B) makes an assignment for the benefit of creditors or (C) applies for or consents to the appointment of any receiver, interim receiver, receiver and manager, monitor, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or any material part of its property or to the marshalling of its assets or liabilities;

(ii) any receiver, interim receiver, receiver and manager, monitor, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed for a Loan Party without the application or consent of such Loan Party and the appointment continues undischarged or unstayed for sixty calendar days;

(iii) any case or proceeding under any Debtor Relief Law relating to a Loan Party is instituted without the consent of such Loan Party and continues undismissed or unstayed for sixty calendar days or

(iv) an order for relief is entered in any such case or proceeding; or

(g) **Judgments.** There is entered against a Loan Party a final, enforceable and non-appealable judgment by a court of competent jurisdiction for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance or another indemnity obligation) and such judgment or order is not satisfied, vacated, discharged or stayed or bonded for a period of sixty consecutive days; or

(h) **Invalidity of Loan Documents.** The material provisions of the Loan Documents, taken as a whole, at any time after their execution and delivery and for any reason cease to be in full force and effect, except

- (i) as permitted by, or as a result of a transaction permitted by, the Loan Documents (including as a result of a transaction permitted under **Section 7.04** or **Section 7.05**),
- (ii) as a result of the Termination Conditions or
- (iii) resulting from acts or omissions of a Secured Party or the application of applicable Law; or

(i) **Collateral Documents and Guarantee.** Any:

(i) Collateral Document with respect to a material portion of the Collateral with a fair market value exceeding the Threshold Amount after its execution and delivery shall for any reason cease to create a valid and perfected Lien, except (A) as otherwise permitted by the Loan Documents, (B) resulting from the failure of the Administrative Agent or the Collateral Agent or any of their agents or bailees to maintain possession or control of Collateral, (C) resulting from the failure to make a filing of a continuation statement under the Uniform Commercial Code or (D) resulting from acts or omissions of a Secured Party; or

(ii) Guarantee with respect to a Guarantor that is the Borrower or a Material Subsidiary (other than an Excluded Subsidiary) shall for any reason cease to be in full force and effect, except (A) as otherwise permitted by the Loan Documents, (B) upon the Termination Conditions, (C) upon the release of such Guarantor as provided for under the Loan Document or in accordance with its terms or (D) resulting from acts or omissions of a Secured Party or the application of applicable Law; or

(j) **Change of Control.** There occurs any Change of Control.

Section 9.02 Remedies upon Event of Default.

(a) If (and only if) any Event of Default occurs and is continuing, the Administrative Agent may, and shall at the request of the Required Lenders, take any or all of the following actions upon notice to the Borrower:

(i) declare the Commitments of each Lender and the obligation of each Issuing Bank to issue Letters of Credit to be terminated, whereupon such Commitments and obligation shall be terminated;

(ii) declare the unpaid principal amount of all outstanding Loans, all interest and premium accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower and each Guarantor;

(iii) require that the Borrower Cash Collateralize its Letters of Credit (in an amount equal to 103% (or if not denominated in Dollars, 110%) of the maximum face amount of all outstanding Letters of Credit); and

(iv) exercise on behalf of itself, the Issuing Banks and the Lenders all rights and remedies available to it, the Issuing Banks and the Lenders under the Loan Documents and/or under applicable Law;

provided that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under any Debtor Relief Law, the Commitments of each Lender and the obligations of each Issuing Bank to issue Letters of Credit shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest, fees, expenses, and other amounts as aforesaid shall automatically become due and payable and the obligation of the Borrower to Cash Collateralize the Letters of Credit as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

(b) **Limitations on Remedies; Cures.**

(i) [Reserved].

(ii) [Reserved]; and

(iii) **Cures.** Any Default or Event of Default resulting from failure to provide notice pursuant to **Section 6.03(a)** shall be deemed not to be “continuing” or “existing” and shall be deemed cured upon delivery of such notice unless the Borrower knowingly fails to give timely notice of such Default or Event of Default as required hereunder.

(iv) **Administrative Agent Notice.** Upon, or prior to, taking any of the actions set forth in **Section 9.02(a)**, other than as set forth in the proviso of **Section 9.02(a)**, the Administrative Agent shall, on behalf of the Required Lenders deliver a notice of Default, Event of Default or acceleration, as applicable, to the Borrower.

For the avoidance of doubt, unless a Default or an Event of Default has occurred and is continuing, the Administrative Agent (and each other Secured Party) shall not take any of the actions described in this **Section 9.02** or bring an action or proceeding under the Loan Documents or with respect to the Obligations.

Section 9.03 Application of Funds. After the exercise of remedies provided for in **Section 9.02** (or after the Loans have automatically become immediately due and payable as set forth in the proviso to **Section 9.02(a)**), any amounts received on account of the Obligations shall, subject to the Intercreditor Agreements (and, in the case of any Defaulting Lender, subject to **Section 2.19**), be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under **Section 11.04** and amounts payable under **Article III**) payable to the Administrative Agent and the Collateral Agent in their capacities as such;

Next, to payment in full of Unfunded Advances/Participations (the amounts so applied to be distributed between or among, as applicable, the Administrative Agent and the Issuing Banks *pro rata* in accordance with the amounts of Unfunded Advances/Participations owed to them on the date of any such distribution);

Next, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest, Obligations under Secured Hedge Agreements and Cash Management Obligations and Letter of Credit fees) payable to the Lenders and the Issuing Banks (including Attorney Costs payable under **Section 11.04** and amounts payable under **Article III**), ratably among them in proportion to the amounts described in this **clause Third** payable to them;

Next, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit fees and interest on the Loans and Letter of Credit Usage, ratably among the Lenders and the Issuing Banks in proportion to the respective amounts described in this **clause Fourth** held by them;

Next, to pay the principal of Protective Advances;

Next, (a) to payment of that portion of the Obligations constituting unpaid principal of the Loans (other than Protective Advances) and the Letter of Credit Usage,

(b) to the extent a Bank Products Reserve has been established therefor by the Administrative Agent in accordance with the terms hereof, to pay the unpaid Reserved Secured Hedge Obligations, including the cash collateralization of such Reserved Secured Hedge Obligations,

(c) to the extent a Bank Products Reserve has been established therefor by the Administrative Agent in accordance the terms hereof, to pay the unpaid Reserved Secured Cash Management Obligations,

(d) to Cash Collateralize Letters of Credit (to the extent not otherwise Cash Collateralized pursuant to the terms of this Agreement) (in an amount equal to 103% (or if not denominated in Dollars, 110%) of the maximum face amount of all outstanding Letters of Credit) and to further permanently reduce the Revolving Commitments by the amount of such Cash Collateralization, ratably among the Secured Parties in proportion to the respective amounts described in this **clause Sixth** held by them; *provided* that

(i) any such amounts applied pursuant to the foregoing **subclause (d)** shall be paid to the Administrative Agent for the ratable account of the Issuing Banks to Cash Collateralize such Letters of Credit, and

(ii) subject to **Section 2.04** and **Section 2.19**, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to this **clause Sixth** shall be applied to satisfy drawings under such Letters of Credit as they occur and

(e) upon the expiration of any Letter of Credit, the *pro rata* share of Cash Collateral attributable to such expired Letter of Credit shall be applied by the Administrative Agent in accordance with the priority of payments set forth in this **Section 9.03**;

Next, ratably to pay other Obligations then due (other than Obligations in respect of Secured Cash Management Services and Secured Hedge Agreements), until paid in full;

Next, ratably to pay other Obligations in respect of Secured Cash Management Services and Secured Hedge Agreements, until paid in full;

Next, to the payment of all other Obligations of the Loan Parties that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been paid in full, to the Borrower or as otherwise required by Law.

Amounts distributed with respect to any Reserved Secured Cash Management Obligations and Reserved Secured Hedge Obligations shall be the lesser of (x) the maximum Reserved Secured Cash Management Obligations and Reserved Secured Hedge Obligations last reported to the Administrative Agent and (y) the Reserved Secured Cash Management Obligations and Reserved Secured Hedge Obligations as calculated by the methodology reported by each applicable Cash Management Bank and Hedge Bank to the Administrative Agent for determining the amount due. The Administrative Agent shall have no obligation to calculate the amount to be distributed with respect to any Reserved Secured Cash Management Obligations and Reserved Secured Hedge Obligations, and at any time and from time to time may request a reasonably detailed calculation of such amount from the applicable Secured Party holding such Reserved Secured Cash Management Obligations and Reserved Secured Hedge Obligations. If a Secured Party fails to deliver such calculation within five (5) days following request by the Administrative Agent, the Administrative Agent may assume the amount to be distributed is no greater than the maximum amount of the Reserved Secured Cash Management Obligations or Reserved Secured Hedge Obligations last reported to Administrative Agent.

ARTICLE X.

ADMINISTRATIVE AGENT AND OTHER AGENTS

Section 10.01 Appointment and Authority of the Administrative Agent.

(a) Each Lender and each Issuing Bank hereby irrevocably appoints Citibank, N.A. to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this **Article X** (other than **Sections 10.09** and **10.11**) are solely for the benefit of the Administrative Agent and the Lenders, and neither the Borrower nor any other Loan Party shall have any rights as a third party beneficiary of any such provision. Each Issuing Bank shall act on behalf of the Revolving Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each Issuing Bank shall have all of the benefits and immunities (i) provided to the Agents in this **Article X** with respect to any acts taken or omissions suffered by such Issuing Bank in connection with

Letters of Credit issued by it or proposed to be issued by it and the Letter of Credit Documents pertaining to such Letters of Credit as fully as if the term “*Agent*” as used in this **Article X** and the definition of “*Agent-Related Person*” included such Issuing Bank with respect to such acts or omissions, and (ii) as additionally provided herein with respect to each Issuing Bank.

(b) Citibank, N.A. shall irrevocably act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank and/or Cash Management Bank) and each of the Issuing Banks hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of (and to hold any security interest created by the Collateral Documents for and on behalf of or in trust for) such Lender and such Issuing Bank for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” (and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to **Section 10.05** and **Section 10.12** for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this **Article X** (including **Section 10.07**, as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Lenders and each other Secured Party hereby expressly authorize the Administrative Agent to execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto (including the Intercreditor Agreements), as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents and acknowledge and agree that any such action by any Agent shall bind the Lenders and each other Secured Party.

Section 10.02 Rights as a Lender. Any Lender that is also serving as an Agent (including as Administrative Agent) hereunder shall have the same rights and powers (and no additional duties or obligations) in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent, and the term “*Lender*” or “*Lenders*” shall, unless otherwise expressly indicated or unless the context otherwise requires, include each Lender (if any) serving as an Agent hereunder in its individual capacity. Any Person serving as an Agent and its Affiliates and branches may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust or other business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not an Agent hereunder and without any duty to account therefor, and may accept fees and other consideration from the Borrower for services in connection herewith and otherwise without having to account for the same. The Lenders acknowledge that, pursuant to such activities, any Agent or its Affiliates or branches may receive information regarding any Loan Party or any of its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that no Agent shall be under any obligation to provide such information to them.

Section 10.03 Exculpatory Provisions. None of the Administrative Agent, any of the other Agents, any of their respective Affiliates or branches, nor any of the officers, partners, directors, employees or agents of the foregoing shall have any duties or obligations except those

expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, an Agent (including the Administrative Agent) or any of their respective officers, partners, directors, employees or agents:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing and without limiting the generality of the foregoing, the use of the term “agent” herein and in the other Loan Documents with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under any agency doctrine of any applicable Law and instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties;

(b) shall not have any duty to take any action or exercise any powers, except actions and powers expressly contemplated by the Loan Documents that such Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), *provided* that, notwithstanding any direction by the Required Lenders to the contrary, no Agent shall be required to take any such action

(i) that, in its opinion or the opinion of counsel (which may include Borrower’s counsel), may expose such Agent to liability or that is contrary to any Loan Document or applicable Law, including for the avoidance of doubt refraining from any action that, in its opinion or the opinion of its counsel, may be in violation of the automatic stay under the Bankruptcy Code or any other Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of the Bankruptcy Code or any other Debtor Relief Law or

(ii) unless it shall be indemnified to its satisfaction by the Lenders against any and all liability and expenses that may be incurred by it by reason of taking or continuing to take any such action (which satisfaction may require such indemnity from such Lenders to be joint and several obligations of such Lenders);

(c) shall not have any duty or responsibility to disclose, and shall not be liable for the failure to disclose to any Lender, any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their Affiliates, information relating to the Borrower or any of its Affiliates that is communicated to, obtained by or in possession of the Person serving as the Administrative Agent, a Lead Arranger or any of their respective Affiliates or branches in any capacity, except for notices, reports and other documents expressly required herein to be furnished to the Lenders by the Administrative Agent or the Lead Arranger, as applicable; and

(d) shall not be liable for any action taken or omitted to be taken under or in connection with any of the Loan Documents except to the extent caused by such Agent’s gross negligence or willful misconduct as determined by a final, non-appealable judgment of a court of competent jurisdiction.

The Administrative Agent shall not be liable for any action taken or not taken by it

(i) with the consent, at the request of or ratified by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in **Section 9.02** and **Section 11.01**) (and such consent, request or ratification shall be binding upon all the Lenders and future holders of the Loans) or

(ii) in the absence of its own gross negligence, bad faith or willful misconduct as determined by a final, non-appealable judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein.

Any notice, consent, request, direction, instruction or ratification by the Required Lenders shall be executed by the Lenders of record providing such consent, request, direction, instruction or ratification. The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Administrative Agent by the Borrower or the Required Lenders in writing.

No Agent-Related Person shall be responsible for or have any duty to ascertain or inquire into

(i) any recital, statement, warranty or representation made in or in connection with any Loan Document (including any Release Certificate),

(ii) the contents of any certificate, report, statement or agreement or other document delivered pursuant to a Loan Document thereunder or in connection with a Loan Document or referred to or provided for in, or received by the Administrative Agent under or in connection with any Loan Document,

(iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or the occurrence of any Default or Event of Default,

(iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents,

(v) the value or the sufficiency of any Collateral, or

(vi) the satisfaction of any condition set forth in **Article IV** or elsewhere in a Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent, or to inspect the properties, books or records of any Loan Party or any Affiliate thereof.

The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Lenders. Without limiting the generality of the foregoing, the Administrative Agent shall not (a) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Lender or (b) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of

confidential information, to any Disqualified Lender. The list of Disqualified Lenders shall be specified on a schedule that is held with the Administrative Agent, which list may be provided to any Lender or its proposed assignee upon request.

For the avoidance of doubt, no Agent shall be obligated to calculate or confirm the calculations of any financial covenants set forth herein or the other Loan Documents or in any of the financial statements of the Loan Parties. No Agent shall be liable to the Lenders for any apportionment or distribution of payments made by it to such Lenders in good faith and if any such apportionment or distribution is subsequently determined to have been made in error, the sole recourse of any Lender to whom payment was due but not made shall be to recover pro rata from the other Lenders any payment equal to the amount to which they are determined to be entitled (and such other Lenders hereby agree to return to such Lender any such erroneous payments received by them).

In no event shall any Agent be liable for any failure or delay in the performance of their respective obligations under this Agreement or any related documents because of circumstances beyond such Agent's control, including, but not limited to, a failure, termination, or suspension of a clearing house, securities depository, settlement system or central payment system in any applicable part of the world or acts of God, flood, war (whether declared or undeclared), civil or military disturbances or hostilities, nuclear or natural catastrophes, political unrest, explosion, severe weather or accident, earthquake, terrorism, fire, riot, labor disturbances, strikes or work stoppages for any reason, embargo, government action, including any laws, ordinances, regulations or the like (whether domestic, federal, state, county or municipal or foreign) which delay, restrict or prohibit the providing of the services contemplated by this Agreement or any related documents, or the unavailability of communications or computer facilities, the failure of equipment or interruption of communications or computer facilities, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility, or any other causes beyond the Agent's control whether or not of the same class or kind as specified above.

Nothing in this Agreement or any other Loan Document shall require any Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder.

The Agents shall have no obligation for (a) perfecting, maintaining, monitoring, preserving or protecting the security interest or Lien granted under this Agreement, any other Loan Document, or any agreement or instrument contemplated hereby or thereby; (b) the filing, re-filing, recording, re-recording, or continuing of any document, financing statement, mortgage, assignment, notice, instrument of further assurance, or other instrument in any public office at any time or times; or (c) providing, maintaining, monitoring, or preserving insurance on or the payment of taxes with respect to any Collateral.

Section 10.04 Reliance by the Agents. The Agents shall be entitled to rely upon, and shall not incur any liability to any Lender for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper

Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan or the issuance of a Letter of Credit that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, each Agent may presume that such condition is satisfactory to such Lender or Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit. Each Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable to any Lender for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Each Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or other requisite percentage of Lenders) and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action (which satisfaction may require such indemnity from such Lenders to be joint and several obligations of such Lenders). The Agents shall in all cases be fully protected in taking any action, or in refraining from taking any action under any Loan Document in accordance with a request or consent of the Required Lenders (or such greater number of Lenders as may be expressly required hereby in any instance) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders; *provided* that the Agents shall not be required to take any action that, in their opinion or in the opinion of counsel (which may include counsel for the Borrower), may expose such Agent to liability or that is contrary to any Loan Document or applicable Law. The Lenders and each other Secured Party agree not to instruct the Administrative Agent, Collateral Agent or any other Agent to take any action, or refrain from taking any action, that would, in each case, cause it to violate an express duty or obligation under this Agreement.

Section 10.05 Delegation of Duties. Each Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Documents by or through any one or more sub agents appointed by such Agent. Each Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Agent-Related Persons. The exculpatory provisions of this **Article X** shall apply to any such sub agent and to the Agent-Related Persons of the Agents and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Agents. Notwithstanding anything herein to the contrary, with respect to each sub agent appointed by an Agent, (i) such sub agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of the Loan Parties and the Lenders, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub agent, and (iii) such sub agent shall only have obligations to the Agent that appointed it as sub agent and not to any Loan Party, Lender or any other Person and no Loan Party, Lender or any other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub agent. Each Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court

of competent jurisdiction determines in a final and non-appealable judgment that such Agent acted with gross negligence or willful misconduct in the selection of such sub agents.

Section 10.06 Non-Reliance on Agents and Other Lenders; Disclosure of Information by Agents.

(a) Each Lender and each Issuing Bank expressly acknowledges that no Agent-Related Person has made any representation or warranty to it, and that no act by any Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender as to any matter, including whether Agent-Related Persons have disclosed material information in their possession. Each Lender and each Issuing Bank represents to each Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their respective Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower and the other Loan Parties hereunder. Each Lender and each Issuing Bank also represents that it will, independently and without reliance upon any Agent, any other Lender or any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower and the other Loan Parties. Except for notices, reports and other documents expressly required to be furnished to the Lenders by any Agent herein, such Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their respective Affiliates which may come into the possession of any Agent-Related Person. Each Lender represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender agrees not to assert a claim in contravention of the foregoing. Each Lender represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities.

(b) Each Lender, by delivering its signature page to this Agreement or an Assignment and Assumption and funding its Revolving Loans on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be approved by any Agent, Required Lenders or Lenders, as applicable on the Closing Date.

(c) Each Lender acknowledges that certain Affiliates of the Loan Parties, including the Sponsors or entities controlled by the Sponsors, are Eligible Assignees hereunder and may purchase Loans and/or Commitments hereunder from the Lenders from time to time, subject to the restrictions set forth in this Agreement.

Section 10.07 Indemnification of Agents.

(a) Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand the Administrative Agent, each Agent, each Issuing Bank, the Swing Line Lender and each other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of any Agent, any Issuing Bank or the Swing Line Lender, as applicable) (without limiting any indemnification obligation of any Loan Party to do so), pro rata, and hold harmless the Administrative Agent, each Agent, each Issuing Bank, the Swing Line Lender and each other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of any Agent, each Issuing Bank or the Swing Line Lender, as applicable) from and against any and all Indemnified Liabilities incurred by it (regardless of whether any such claim, litigation, investigation or proceeding is by or against any such Lender; **provided** that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting from such Agent-Related Person's own gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction; **provided** that, to the extent each Issuing Bank or Swing Line Lender is entitled to indemnification under this **Section 10.07** solely in its capacity and role as an Issuing Bank or as a Swing Line Lender, as applicable, only the Revolving Lenders shall be required to indemnify the applicable Issuing Bank or the Swing Line Lender, as the case may be, in accordance with this **Section 10.07** (determined as of the time that the applicable payment is sought based on each Revolving Lender's Pro Rata Share thereof at such time); **provided, further**, that no action taken in accordance with the terms of a Loan Document or in accordance with the directions of the Required Lenders (or such other number or percentage of the Lenders as shall be required by the Loan Documents) shall be deemed to constitute gross negligence or willful misconduct for purposes of this **Section 10.07**. If any indemnity furnished to any Agent, any Issuing Bank or the Swing Line Lender for any purpose shall, in the opinion of such Agent, such Issuing Bank or the Swing Line Lender, as applicable, be insufficient or become impaired, such Agent, such Issuing Bank or the Swing Line Lender, as applicable, may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this **Section 10.07** applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse each Agent, each Issuing Bank and the Swing Line Lender, as applicable, upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by such Agent, such Issuing Bank or the Swing Line Lender, as applicable, in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein; **provided** that such reimbursement by the Lenders shall not affect the Borrower's continuing reimbursement obligations with respect thereto; **provided, further**, that the failure of any Lender to indemnify or reimburse such Agent, such Issuing Bank or the Swing Line Lender, as applicable, shall not relieve

any other Lender of its obligation in respect thereof. The undertaking in this **Section 10.07** shall survive termination of the Aggregate Commitments, the payment of all other Obligations and the resignation of the Administrative Agent, Collateral Agent, any other Agents, any Issuing Bank and the Swing Line Lender.

(b) Each Lender, each Swing Line Lender and each Issuing Bank hereby authorizes the Administrative Agent and Collateral Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable or distributable by the Administrative Agent or the Collateral Agent to such Lender from any source against any amount due to the Administrative Agent or the Collateral Agent under **Section 2.14** or this **Section 10.07**.

Section 10.08 No Other Duties; Other Agents, Lead Arrangers, Managers, Etc. Each of Citibank, N.A., Goldman Sachs Bank USA, BofA Securities, Inc., Credit Suisse Loan Funding LLC, UBS Securities LLC and Wells Fargo Bank, National Association is each hereby appointed as a Lead Arranger hereunder, and each Lender hereby authorizes Citibank, N.A., Goldman Sachs Bank USA, BofA Securities, Inc., Credit Suisse Loan Funding LLC, UBS Securities LLC and Wells Fargo Bank, National Association to act as a Lead Arranger in accordance with the terms hereof and the other Loan Documents.

Each Agent hereby agrees to act in its capacity as such upon the express conditions contained herein and the other Loan Documents, as applicable. Anything herein to the contrary notwithstanding, none of the Lead Arrangers or the other Agents listed on the cover page hereof (or any of their respective Affiliates or branches) shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except (a) in its capacity, as applicable, as the Administrative Agent, the Collateral Agent or a Lender hereunder and (b) as provided in **Section 11.01(b)(iv)**, and such Persons shall have the benefit of this **Article X**. Without limiting the foregoing, none of the Lenders or other Persons so identified shall have or be deemed to have any agency or fiduciary or trust relationship with any Lender, the Borrower, or any of their respective Subsidiaries. Each Lender acknowledges that it has not relied, and will not rely, on any of the Lenders or other Persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder. Any Agent may resign from such role at any time, with immediate effect, by giving prior written notice thereof to the Administrative Agent and Borrower.

Section 10.09 Resignation of Administrative Agent or Collateral Agent.

The Administrative Agent or the Collateral Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, subject to the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed), at all times other than during the existence of a Specified Event of Default, to appoint a successor, which shall be a Lender or a bank with an office in the United States, or an Affiliate of any such Lender or bank with an office in the United States (or such other financial institution reasonably acceptable to the Borrowers).

If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty days after the retiring Administrative Agent or Collateral Agent, as applicable, gives notice of its resignation, then the retiring Administrative Agent or Collateral Agent, as applicable, may on behalf of the Lenders, appoint a successor Administrative

Agent or Collateral Agent, as applicable, meeting the qualifications set forth above; *provided* that if the Administrative Agent or Collateral Agent, as applicable, shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent or Collateral Agent, as applicable, shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent or Collateral Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor of such Agent is appointed) and (b) except for any indemnity payments or other amounts owed to the retiring or retired Administrative Agents, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section.

If neither the Required Lenders nor the Administrative Agent have appointed a successor Administrative Agent, the Required Lenders shall be deemed to have succeeded to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent (subject to the proviso in the sentence above).

Upon the acceptance of a successor's appointment as Administrative Agent or Collateral Agent, as applicable, hereunder and upon the execution and filing or recording of such financing statements, or amendments thereto and such other instruments or notices, as may be necessary or appropriate, or as the Required Lenders may request, in order to perfect or continue the perfection of the Liens granted or purported to be granted by the Collateral Documents, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent or Collateral Agent, as applicable (other than any rights to indemnity payments or other amounts owed to the retiring or retired Administrative Agent), and the retiring Administrative Agent or Collateral Agent, as applicable, shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this **Section 10.09**).

The fees payable by the Borrower to a successor Administrative Agent or Collateral Agent, as applicable, shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this **Article X** and **Sections 10.07, 11.04** and **11.05** shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Agent-Related Persons in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Administrative Agent or Collateral Agent, as applicable.

Section 10.10 Administrative Agent May File Proofs of Claim; Credit Bidding. In case of the pendency of any case or proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or in respect of Letter of Credit Obligations shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated), by intervention in such case or proceeding or otherwise:

(a) to file a verified statement pursuant to rule 2019 of the Federal Rules of Bankruptcy Procedure or any comparable provision of any other Debtor Relief Law that, in its sole opinion, complies with such rule's or Debtor Relief Law's disclosure requirements for entities representing more than one creditor;

(b) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Letter of Credit Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks and the Administrative Agent (including any claim for the reasonable compensation, expenses, fees, disbursements and advances of the Lenders, the Issuing Banks and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Banks and the Administrative Agent under **Sections 2.11** and **11.04**) allowed in such judicial case or proceeding; and

(c) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, interim receiver, receiver and manager, monitor, assignee, liquidator, sequestrator, trustee, or other similar official in any such judicial proceeding is hereby authorized by each Lender and each Issuing Bank to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Banks, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements, fees, and advances of the Agents and their respective agents and counsel, and any other amounts due the Administrative Agent under **Sections 2.11** and **11.04**. To the extent that the payment of any such compensation, expenses, disbursements, fees, and advances of the Administrative Agent, its agents and counsel, and any other amounts due the Administrative Agent under **Sections 2.11** and **11.04** out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Lenders or the Issuing Banks may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization, arrangement or proposal or otherwise.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or any Issuing Bank any proposed plan of reorganization, arrangement, adjustment or composition, proposal or similar dispositive restructuring plan affecting the Obligations or the rights of any Lender or any Issuing Bank or to authorize the Administrative Agent to vote in respect of the claim of any Lender or any Issuing Bank in any such case or proceeding.

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles so long as no Lender is prohibited from owning an interest therein) all or any portion of the Collateral

(i) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, any comparable provisions of any other Debtor Relief Law, or any similar Laws in any other jurisdictions to which a Loan Party is subject or

(ii) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law.

In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid

(A) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid,

(B) to adopt documents providing for the governance of the acquisition vehicle or vehicles (*provided* that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof, shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in **Section 11.01** of this Agreement),

(C) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action and

(D) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

Section 10.11 Collateral and Guaranty Matters.

(a) Each Agent, each Lender (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank), each Issuing Bank and each other Secured Party

irrevocably authorizes the Administrative Agent and the Collateral Agent to be the agent for and representative of the Lenders and Issuing Bank with respect to the Guaranty, the Collateral and the Collateral Documents and agrees that, notwithstanding anything to the contrary in any Loan Documents:

(i) Liens on any property granted to or held by an Agent or in favor of any Secured Party under any Loan Document will be automatically and immediately released, and each Secured Party irrevocably authorizes and directs the Agents to enter into, and each Secured Party and Agent agrees that it will enter into, the necessary or advisable documents requested by the Borrower and associated therewith, upon the occurrence of any of the following events (each, a “**Lien Release Event**”),

(a) the payment in full in cash of all the Obligations (other than Cash Management Obligations, Obligations in respect of Secured Hedge Agreements and contingent obligations in respect of which no claim has been made);

(b) a transfer of the property subject to such Lien as part of, or in connection with, a transaction that is permitted (or not prohibited) by the terms of the Loan Documents to any Person that is not a Loan Party;

(c) with respect to property owned by any Guarantor or with respect to which any Guarantor has rights (with respect to the rights of such Guarantor), the release of such Guarantor from its obligations under its Guaranty pursuant to a Guaranty Release Event;

(d) the approval, authorization or ratification of the release of such Lien by the Required Lenders or such percentage as may be required pursuant to **Section 11.01**;

(e) such property becoming an Excluded Asset, Excluded Equity Interest or an asset owned by an Excluded Subsidiary or with respect to which an Excluded Subsidiary (and no other Loan Party) has ownership rights;

(f) as to the assets owned by such Excluded Subsidiary (or with respect to which an Excluded Subsidiary (and no other Loan Party) has rights), upon any Person becoming an Excluded Subsidiary (other than pursuant to **clause (a)** of the definition thereof, to the extent a result of the transfer of Equity Interests in such Subsidiary Guarantor to an Affiliate of the Borrower);

(g) any such Securitization Assets becoming subject to a Qualified Securitization Financing to the extent required by the terms of such Qualified Securitization Financing;

(h) upon the request of the Borrower (such request, the “**Release/Subordination Event**”) it will release or subordinate any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by **Section 7.01(d)**;

(i) a Subsidiary Guarantor will be automatically and immediately released from its obligations under the Guaranty upon (A) such Subsidiary Guarantor ceasing to be a Subsidiary of the Borrower, (B) such Subsidiary Guarantor ceasing to be a Material Subsidiary, or (C) such Subsidiary Guarantor becoming an Excluded Subsidiary (other than pursuant to **clause (a)** of the definition thereof, to the extent a result of the transfer of Equity Interests in such Subsidiary Guarantor to an Affiliate of the Borrower) as a result of a transaction permitted hereunder (**clauses (A)-(C)**, each a “**Guaranty Release Event**”), and each Secured Party irrevocably authorizes and directs the Agents to enter into, and each Agent agrees it will enter into, the necessary and advisable documents requested by the Borrower to (1) release (or acknowledge the release of) such Subsidiary Guarantor from its obligations under the Guaranty and (2) release (or acknowledge the release of) any Liens granted by such Subsidiary or Liens on the Equity Interests of such Subsidiary; and

(j) the Administrative Agent and the Collateral Agent will exclusively exercise the rights and remedies under the Loan Documents, and neither the Lenders nor any other Secured Party will exercise such rights and remedies (other than the Required Lenders exercising such rights and remedies through the Administrative Agent); **provided** that the foregoing shall not preclude any Lender from exercising any right of set-off in accordance with the provisions of **Section 11.09**, enforcing compliance with the provisions set forth in **Section 11.01(b)** or from exercising rights and remedies (other than the enforcement of Collateral) with respect to any payment default after the occurrence of the Maturity Date with respect to any Loans made by it or filing proofs of claim (and voting with respect to its claims) or appearing and filing pleadings on its own behalf during the pendency of a case or proceeding relative to any Loan Party under any Debtor Relief Law

(ii) the Administrative Agent and Collateral Agent shall, and the Lenders and other Secured Parties irrevocably authorize and instruct the Administrative Agent and Collateral Agent to, from time to time on and after the Closing Date, without any further consent of any Lender counterparty to any Cash Management Obligation or Secured Hedge Agreement or other Secured Party,

(a) enter into any Intercreditor Agreement or other intercreditor agreement contemplated hereunder with the collateral agent or other representative of the holders of Indebtedness that is secured by a Lien on Collateral that is not prohibited (including with respect to priority) under this Agreement or

(b) subordinate any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document to the holder of any Permitted Lien on such property in respect of any Indebtedness that has priority as a matter of law or is expressly permitted hereunder to be incurred and secured on a priority lien basis to the Liens securing Obligations.

(b) Each Agent, each Lender and each other Secured Party agrees that it will promptly take such action and execute any such documents in a form reasonably satisfactory to the Administrative Agent as may be reasonably requested by the Borrower (such actions and such execution, the “**Release Actions**”), at the Borrower’s sole cost and expense, in connection with a Lien Release Event, Release/Subordination Event or Guaranty Release Event and that such actions are not discretionary. Without limitation, the Release Actions may include, as applicable, (a) executing (if required) and delivering to the Loan Parties (or any designee of the Loan Parties) any such lien releases, discharges of security interests, pledges and guarantees and other similar discharge or release documents, as are reasonably requested by a Loan Party in connection with the release, as of record, of the Liens (and all notices of security interests and Liens previously filed) the subject of a Lien Release Event or Release/Subordination Event or the release of any applicable Guarantee in connection with a Guaranty Release Event and (b) delivering to the Loan Parties (or any designee of the Loan Parties) all instruments evidencing pledged debt and all equity certificates and any other collateral previously delivered in physical form by the Loan Parties to a Secured Party.

In connection with any Lien Release Event, Release/Subordination Event, Guaranty Release Event or Release Action, each of the Collateral Agent and the Administrative Agent and each Secured Party shall be entitled to rely and shall rely exclusively on an officer’s certificate of the Borrower (the “**Release Certificate**”) confirming that

- (a) such Lien Release Event, Release/Subordination Event or a Guaranty Release Event, as applicable, has occurred or will upon consummation of one or more identified transactions (an “**Identified Transaction**”) occur,
- (b) the conditions to any such Lien Release Event, Release/Subordination Event or Guaranty Release Event have occurred or will occur upon consummation of an Identified Transaction, and
- (c) that any such Identified Transaction is permitted by (or not prohibited by) the Loan Documents.

The Collateral Agent and the Administrative Agent will be fully exculpated from any liability and shall be fully protected and shall not have any liability whatsoever to any Secured Party or any other Person as a result of such reliance or the consummation of any Release Action. The Borrower shall indemnify, defend and hold harmless the Administrative Agent, any Supplemental Administrative Agent, the Collateral Agent, and their respective Affiliates, directors, officers, directors, employees, agents, advisors, partners, trustees, controlling persons, and other representatives of each of the foregoing (collectively, the “**Section 10.11 Indemnitees**”) from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including Attorney Costs to the extent set forth in **Section 10.05**) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such **Section 10.11** Indemnitee in any way relating to or arising out of or in connection with any Release Action, Lien Release Event, Release/Subordination Event or Guaranty Release Event (regardless of whether any **Section 10.11** Indemnitee is party thereto or such claim, litigation, investigation or proceeding is by or against the Borrower or any Affiliate

thereof). A Release Certificate may be delivered in advance of the consummation of any applicable Identified Transaction.

Each Lender and each Secured Party irrevocably authorizes and irrevocably directs the Collateral Agent and the Administrative Agent to take the Release Actions and consents to reliance on the Release Certificate. The Secured Parties agree not to give any Agent any instruction or direction inconsistent with the provisions of this **Section 10.11**. Neither the Administrative Agent nor the Collateral Agent shall be responsible for, or have a duty to ascertain or inquire into, any statement in a Release Certificate, the compliance of any Identified Transaction with the terms of a Loan Document, any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or contained in any certificate prepared or delivered by any Loan Party in connection with the Collateral or compliance with the terms set forth above or in a Loan Document, nor shall the Administrative Agent or Collateral Agent be responsible or liable for any failure to monitor or maintain any portion of the Collateral or validity, perfection or priority of any lien thereon.

Each relevant Agent, each Lender and each other Secured Party agrees that following its receipt of an applicable Release Certificate it will take all Release Actions promptly upon request of the Borrower and in any event not later than the date that is (i) the fifth Business Day following the date Release Certificate is delivered to the Administrative Agent and (ii) the date any applicable Identified Transaction described in the Release Certificate is consummated (such latter date, the "**Release Date**"), Notwithstanding the foregoing, nothing set forth in this **Section 10.11** shall relieve or release any Loan Party from any liability resulting from a Default or Event of Default that results from an Identified Transaction or misrepresentation or omission in any Release Certificate.

Notwithstanding anything to the contrary, no Lien Release Event, Release/Subordination Event or Guaranty Release Event, outside of the ordinary course of business, shall be permitted if, after giving pro forma effect to such Lien Release Event, Release/Subordination Event or Guaranty Release Event (including any prepayment or repayment of the Loans in connection therewith), the Total Utilization of Revolving Commitments exceeds the Line Cap.

(c) Anything contained in any of the Loan Documents to the contrary notwithstanding, each Agent, each Lender and each Secured Party hereby agree that:

(i) no Lender or other Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty or any other Loan Document, it being understood and agreed that all powers, rights and remedies hereunder and under any of the Loan Documents may be exercised solely by the Administrative Agent or the Collateral Agent, as applicable, for the benefit of the Lenders in accordance with the terms hereof and thereof, and all powers, rights and remedies under the Collateral Documents may be exercised solely by the Collateral Agent for the benefit of the Lenders in accordance with the terms thereof;

(ii) in the event of a foreclosure or similar enforcement action by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition (including, without limitation, pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or

otherwise of the Bankruptcy Code (or any comparable provision(s) of any other applicable Debtor Relief Law)), the Collateral Agent or the Administrative Agent, as agent for and representative of Lenders (but not any Lender or Lenders in its or their respective individual capacities), shall be entitled, upon instructions from the Required Lenders to be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition, and the Collateral Agent, as agent for and representative of Lenders (but not any Lender or Lenders in its or their respective individual capacities), shall be entitled, upon instructions from the Required Lenders, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale or disposition, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Collateral Agent at such sale or other disposition;

(iii) no provision of any Loan Documents shall require the creation, perfection or maintenance of pledges of or security interests in, or the obtaining of title insurance or abstracts with respect to, any Excluded Assets, any Excluded Equity Interests and any other particular assets, if and for so long as, in the reasonable judgment of the Collateral Agent, the cost of creating, perfecting or maintaining such pledges or security interests in such other particular assets or obtaining title insurance or abstracts in respect of such other particular assets is excessive in view of the fair market value of such assets or the practical benefit to the Lenders afforded thereby;

(iv) the Collateral Agent may grant extensions of time for the creation or perfection of security interests in or the obtaining of title insurance and surveys with respect to particular assets (including extensions beyond the Closing Date for the creation or perfection of security interests in the assets of the Loan Parties on such date) where it reasonably determines, in consultation with the Borrower, that creation or perfection cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement or the Collateral Documents.

Section 10.12 Appointment of Supplemental Administrative Agents.

(a) It is the purpose of this Agreement and the other Loan Documents that there shall be no violation of any Law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in case of litigation under this Agreement or any of the other Loan Documents, and in particular in case of the enforcement of any of the Loan Documents, or in case the Administrative Agent deems that by reason of any present or future Law of any jurisdiction it may not exercise any of the rights, powers or remedies granted herein or in any of the other Loan Documents or take any other action which may be desirable or necessary in connection therewith, the Administrative Agent is hereby authorized to appoint an additional individual or institution selected by the Administrative Agent in its sole discretion as a separate trustee, co-trustee, administrative agent, collateral agent, administrative sub-agent or administrative co-agent (any such additional individual or institution being referred to herein individually, as a “**Supplemental Administrative Agent**” and, collectively, as “**Supplemental Administrative Agents**”).

(b) In the event that the Administrative Agent appoints a Supplemental Administrative Agent with respect to any Collateral, (i) each and every right, power, privilege or duty expressed or intended by this Agreement or any of the other Loan Documents to be exercised by or vested in or conveyed to the Administrative Agent with respect to such Collateral shall be exercisable by and vest in such Supplemental Administrative Agent to the extent, and only to the extent, necessary to enable such Supplemental Administrative Agent to exercise such rights, powers and privileges with respect to such Collateral and to perform such duties with respect to such Collateral, and every covenant and obligation contained in the Loan Documents and necessary to the exercise or performance thereof by such Supplemental Administrative Agent shall run to and be enforceable by either the Administrative Agent or such Supplemental Administrative Agent, and (ii) the provisions of this **Article X** and of **Sections 11.04** and **11.05** that refer to the Administrative Agent shall inure to the benefit of such Supplemental Administrative Agent and all references therein to the Administrative Agent shall be deemed to be references to the Administrative Agent and/or such Supplemental Administrative Agent, as the context may require.

(c) Should any instrument in writing from any Loan Party be required by any Supplemental Administrative Agent so appointed by the Administrative Agent for more fully and certainly vesting in and confirming to him or it such rights, powers, privileges and duties, the Borrower shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments promptly upon request by the Administrative Agent. In case any Supplemental Administrative Agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Administrative Agent, to the extent permitted by Law, shall vest in and be exercised by the Administrative Agent until the appointment of a new Supplemental Administrative Agent.

Section 10.13 Intercreditor Agreements.

Notwithstanding anything to the contrary set forth in any Loan Document, to the extent the Administrative Agent or Collateral Agent enters into any Intercreditor Agreement, this Agreement will be subject to the terms and provisions of such Intercreditor Agreement. In the event of any inconsistency between the provisions of this Agreement or any other Loan Document and any such Intercreditor Agreement, the provisions of such Intercreditor Agreement govern and control. The Secured Parties acknowledge and agree that each Agent is (i) authorized and instructed to enter into any Intercreditor Agreement to be executed on the Closing Date with respect to Indebtedness incurred on the Closing Date pursuant to **Section 7.03(b)(i)(A)** and **7.03(b)(ii)** and (ii) authorized to, and each Agent agrees that, with respect to any secured Indebtedness, upon request by the Borrower, it shall, enter into an Intercreditor Agreement contemplated hereunder with respect to such Indebtedness with the collateral agent or other Debt Representative of the holders of such Indebtedness unless such Indebtedness and any related Liens (including the priority of such Liens) are prohibited by **Section 7.01**, **Section 7.03** or any other provision of this Agreement. The Secured Parties hereby authorize and instruct the Administrative Agent and the Collateral Agent to (a) enter into any such Intercreditor Agreement executed on the Closing Date or any such other Intercreditor Agreement, (b) bind the Secured Parties on the terms set forth in any such Intercreditor Agreement and (c) perform and observe its obligations under any such Intercreditor Agreement. The Agents and each Secured Party agree that the Agents shall be entitled to rely and shall rely exclusively on an officer's certificate of the Borrower in determining whether it is authorized or instructed to enter into an Intercreditor Agreement pursuant to this Section. Each

Secured Party covenants and agrees not to give the Collateral Agent or Administrative Agent any instruction that is not consistent with the provisions of this **Section 10.13**.

Section 10.14 Secured Cash Management Agreements and Secured Hedge Agreements. Except as otherwise expressly set forth herein or in any Guaranty or any Collateral Document, no Cash Management Bank or Hedge Bank that obtains the benefits of **Section 9.03**, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral or any Guaranty (including the release or impairment of any Collateral or Guaranty) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this **Article X** to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Cash Management Obligations or Obligations arising under Secured Hedge Agreements unless the Administrative Agent has received written notice of such Cash Management Obligations or such Obligations arising under Secured Hedge Agreements, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

Section 10.15 Withholding Taxes. To the extent required by any applicable Law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding tax. If any Governmental Authority asserts a claim that the Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify the Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding tax ineffective or for any other reason, or if the Administrative Agent reasonably determines that a payment was made to a Lender pursuant to this Agreement without deduction of applicable withholding tax from such payment, such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred.

Section 10.16 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments or this Agreement;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified

professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a "**Qualified Professional Asset Manager**" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) **sub-clause (i)** in the immediately preceding **clause (a)** is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with **sub-clause (iv)** in the immediately preceding **clause (a)**, such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

ARTICLE XI. MISCELLANEOUS

Section 11.01 Amendments, Waivers, Etc.

(a) **General Rule.** Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (or the Administrative Agent on behalf of the Required Lenders) and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) **Specific Lender Approvals.** Notwithstanding the provisions of **Section 11.01(a)**, no such amendment, waiver or consent shall:

(i) extend or increase the Commitment of any Lender or extend the final expiration date of any Letter of Credit beyond the Letter of Credit Expiration Date, without the written consent of such Lender (it being understood that a waiver of any condition precedent set forth in **Section 4.02** or the waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender);

(ii) postpone any date scheduled for, or reduce the amount of, any payment of principal, interest or fees with respect to any Loan or Letter of Credit or with respect to any fees payable under **Section 2.11(b)** without the written consent of each Lender entitled to such payment of principal, interest or fees, it being understood that

(a) the waiver of (or amendment to the terms of) any mandatory prepayment of the Loans shall not constitute a postponement of any date scheduled for the payment of principal, interest or fees and

(b) a waiver of any condition precedent set forth in **Section 4.02** or the waiver of any Default (other than a Default under **Section 9.01(a)**) or mandatory reduction of the Commitments shall not constitute a postponement of any date scheduled for, or a reduction in the amount of, any payment of principal, interest or fees;

(iii) reduce the principal of, or the rate of interest specified herein on, any Loan or Letter of Credit or any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender entitled to such principal, interest or Person entitled to such fee or other amount, as applicable; *provided* that (A) only the consent of the Required Lenders shall be necessary to amend the definition of “**Default Rate**” and (B) with respect to any Facility, only the consent of the Required Facility Lenders shall be necessary to waive any obligation of the Borrower to pay interest at the Default Rate with respect to such Facility;

(iv) change any provision of this **Section 11.01** or the definition of “**Required Lenders**,” “**Required Facility Lenders**,” “**Super Majority Lenders**” or “**Pro Rata Share**” or any other provision specifying the number of Lenders or portion of the Loans or Commitments required to take any action under the Loan Documents, without the written consent of each Lender;

(v) (A) other than in connection with a transfer or other transaction permitted (or not prohibited) under the Loan Documents, release all or substantially all of the Collateral in any transaction or series of related transactions or

(B) (1) subordinate the Obligations to any other obligations or (2) subordinate the Lien securing the Obligations to Liens securing debt for borrowed money (or guarantees thereof) (other than in respect of the Liens of the type

incurred pursuant to **Section 7.01(d)** on the date hereof), in each case, without the written consent of each Lender;

(vi) other than in connection with a transfer or other transaction permitted (or not prohibited) under the Loan Documents, release all or substantially all of the aggregate value of the Guaranty or all or substantially all of the Guarantors, without the written consent of each Lender;

(vii) modify **Section 2.15** or **Section 9.03**, including in a manner that would by its terms alter the pro rata sharing of payments required thereby, 2.07(b)(ii) or 9.03 without the written consent of each Lender directly and adversely affected thereby;

(viii) increase the percentages set forth in the definition of “**Borrowing Base**”, without the consent of the Super Majority Lenders;

(ix) change the definition of the term “**Borrowing Base**”, or any component definition thereof (including the definition of “**Borrowing Base Parties**”, “**Eligible Account**”, “**Eligible Inventory**”, “**Net Orderly Liquidation Value**” and “**Qualified Cash**”), the effect of which would be to increase amounts available to be borrowed, without the consent of the Super Majority Lenders; **provided**, that the foregoing shall not limit the ability of the Administrative Agent to implement, change or eliminate Reserves in its Permitted Discretion as permitted hereunder without the prior written consent of any Lender;

(x) change the currency in which any Loan or Letter of Credit Borrowing is denominated without the written consent of each Lender holding such Loans or each Issuing Bank holding such Letter of Credit Borrowings;

(xi) change the definition of “**Alternative Currency**” or the related process for designating an Alternative Currency as set forth in **Section 2.01(b)(i)** without the written consent of each Lender; or

(xii) cause any real property to be included in the Collateral securing the Obligations.

(c) **Other Approval Requirements.** Notwithstanding the provisions of **Section 11.02(a)** or **11.01(b)**;

(i) no amendment, waiver or consent shall, unless in writing and signed by an Issuing Bank in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, such Issuing Bank under this Agreement, any Issuance Notice or any other Loan Document relating to any Letter of Credit issued or to be issued by it,

(ii) no amendment, waiver of consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Swing Line Lender under this Agreement or any other Loan Document,

(iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, adversely affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document,

(iv) no amendment, waiver or consent shall, unless in writing and signed by the Collateral Agent in addition to the Lenders required above, adversely affect the rights or duties of, or any fees or other amounts payable to, the Collateral Agent under this Agreement or any other Loan Document,

(v) **Section 11.07(g)** may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification,

(vi) the consent of the Required Facility Lenders shall be required with respect to any amendment that by its terms adversely affects the rights of Lenders under such Facility in respect of payments hereunder in a manner different than such amendment affects other Facilities,

(vii) [reserved]; and

(viii) any amendment to the definition of “**Letter of Credit Percentage**” shall require the consent only of the Borrower, the Administrative Agent and each directly and adversely affected Issuing Bank.

(d) **Intercreditor Agreement.** No Lender or Issuing Bank consent is required to effect any amendment or supplement to any Intercreditor Agreement or any other intercreditor agreement that is

(i) for the purpose of adding the holders of Pari Passu Lien Debt, Junior Lien Debt, Incremental Equivalent Debt, Permitted Pari Passu Secured Refinancing Debt or Permitted Junior Secured Refinancing Debt (or a Debt Representative with respect to any Indebtedness with respect to which it is a representative or agent) as parties thereto, as expressly contemplated by the terms of such intercreditor agreement (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing) or

(ii) expressly contemplated by such Intercreditor Agreement or any other intercreditor agreement.

(e) **Additional Facilities and Replacement Loans.**

(i) **Additional Facilities.** Subject to **clause (b)**, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (I) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the

benefits of this Agreement and the other Loan Documents with the Loans and the accrued interest and fees in respect thereof and (II) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders,

(ii) [reserved]

(f) Benchmark Replacement Setting.

(i) ***Benchmark Replacement.*** Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event with respect to any Benchmark, the Administrative Agent and the Borrower may amend this Agreement to replace such Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the Administrative Agent has posted such proposed amendment to all affected Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section (f) will occur prior to the applicable Benchmark Transition Start Date.

(ii) ***Benchmark Replacement Conforming Changes.*** In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(iii) ***Notices; Standards for Decisions and Determinations.*** The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to this Section (f) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section (f), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section (f).

(iv) ***Unavailability of Tenor of Benchmark.*** Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a

term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) ***Benchmark Unavailability Period.*** Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Benchmark for Dollar, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Term Benchmark Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Base Rate. Upon the commencement of a Benchmark Unavailability Period with respect to a Benchmark for any currency other than Dollar, the Borrower may revoke any pending request for such Borrowing of, conversion to or continuation of such Loans, in each case, to be made, converted or continued during any Benchmark Unavailability Period denominated in the applicable currency and, failing that, if applicable, then such request shall be ineffective and any outstanding affected Loans, in each case, denominated in an Alternative Currency, at the Borrower’s election, shall either (I) be converted into Base Rate denominated in Dollars (in an amount equal to the Dollar Amount of such Alternative Currency) or (II) be prepaid in full immediately or at the end of the applicable Interest Period, as applicable.

(vi) ***Disclaimer.*** The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of

any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

(g) **Certain Amendments to Guaranty and Collateral Documents.** In addition, notwithstanding anything to the contrary contained in this **Section 11.01**, the Guaranty, the Collateral Documents and related documents executed by the Borrower, and/or the Restricted Subsidiaries in connection with this Agreement and the other Loan Documents may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects (as reasonably determined by the Administrative Agent and the Borrower) or (iii) to cause such Guaranty, Collateral Document or other document to be consistent with this Agreement and the other Loan Documents.

(h) **Defaulting Lenders.** Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders, the Required Lenders, the Required Facility Lenders, the Super Majority Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders or Disqualified Lenders), except that (1) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Defaulting Lender and (2) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender. Disqualified Lenders shall be subject to the provisions of **Section 10.27**.

Section 11.02 Notices and Other Communications; Facsimile Copies.

(a) **General.** Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in **subsection (b)** below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, the Guarantors, the Issuing Banks, the Swing Line Lender, the Collateral Agent or the Administrative Agent, to the address, fax number, electronic mail address or telephone number specified for such Person on **Schedule 11.02**; and

(ii) if to any other Lender, to the address, fax number, electronic mail addresses or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by fax shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient); and notices deposited in the United States mail with postage prepaid and properly addressed shall be deemed to have been given within three Business Days of such deposit; *provided* that no notice to any Agent shall be effective until received by such Agent. Notices and other communications delivered through electronic communications to the extent provided in **subsection (b)** below shall be effective as provided in such **subsection (b)**.

(b) **Electronic Communication.** Notices and other communications to any Agent, the Lenders, the Swing Line Lender and the Issuing Banks hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites, including the Platform) pursuant to procedures approved by the Administrative Agent, *provided* that the foregoing shall not apply to notices to any Agent, Lender, Swing Line Lender or the Issuing Banks pursuant to **Article II** if such Person, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided* that approval of such procedures may be limited to particular notices or communications.

(c) **Receipt.** Unless the Administrative Agent otherwise prescribes,

(i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and

(ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing **clause (i)** of notification that such notice or communication is available and identifying the website address therefor.

(d) **Risks of Electronic Communications.** Each Loan Party understands that the distribution of materials through an electronic medium is not necessarily secure and that there are

confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the willful misconduct, bad faith or gross negligence of the Administrative Agent, any Lender, the Swing Line Lender or any Issuing Bank as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(e) **The Platform.** THE PLATFORM IS PROVIDED “*AS IS*” AND “*AS AVAILABLE.*” THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS OR IN THE PLATFORM. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Agent-Related Persons or any Lead Arranger (collectively, the “*Agent Parties*”) have any liability to the Borrower, any Lender, the Swing Line Lender, any Issuing Bank or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower’s or the Administrative Agent’s transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Agent Party; *provided, however*, that in no event shall any Agent Party have any liability to the Borrower, any Lender, the Swing Line Lender, any Issuing Bank or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages). Each Loan Party, each Lender, each Issuing Bank and each Agent agrees that the Administrative Agent may, but shall not be obligated to, store any Borrower Materials on the Platform in accordance with the Administrative Agent’s customary document retention procedures and policies.

(f) **Change of Address.** Each of the Borrower, the Guarantors, the Administrative Agent, the Swing Line Lender and the Issuing Banks may change its address, fax or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, fax or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent, the Collateral Agent, the Swing Line Lender and the Issuing Banks. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, fax number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(g) **Reliance by the Administrative Agent, the Issuing Banks and the Lenders.** The Administrative Agent, the Issuing Banks and the Lenders shall be entitled to rely and act upon any notices (including Committed Loan Notices, Swing Line Loan Requests and Issuance Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any

confirmation thereof. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording. The Borrower shall indemnify the Administrative Agent, the Issuing Banks and the Lenders and each Agent-Related Person from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower in the absence of gross negligence, bad faith or willful misconduct as determined in a final and non-appealable judgment by a court of competent jurisdiction.

(h) **Private-Side Information Contacts.** Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “**Private-Side Information**” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States federal and state securities Laws, to make reference to information that is not made available through the “**Public-Side Information**” portion of the Platform and that may contain Private-Side Information with respect to the Borrower, its Subsidiaries or their respective securities for purposes of United States federal or state securities laws. In the event that any Public Lender has determined for itself to not access any information disclosed through the Platform or otherwise, such Public Lender acknowledges that (i) other Lenders may have availed themselves of such information and (ii) neither the Borrower nor the Administrative Agent has (A) any responsibility for such Public Lender’s decision to limit the scope of the information it has obtained in connection with this Agreement and the other Loan Documents and (B) any duty to disclose such information to such Public Lender or to use such information on behalf of such Public Lender, and shall not be liable for the failure to so disclose or use, such information.

Section 11.03 **No Waiver; Cumulative Remedies.** No forbearance, failure or delay by any Lender or any Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall impair such right, remedy, power or privilege or operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and independent of any rights, remedies, powers and privileges provided by Law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Borrower shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with **Article IX** for the benefit of all the Lenders and the Issuing Banks; **provided** that the foregoing shall not prohibit

(i) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents,

(ii) any Issuing Bank or the Swing Line Lender from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as an Issuing Bank or the Swing Line Lender, as applicable) hereunder and under the other Loan Documents,

(iii) any Lender from exercising setoff rights in accordance with **Section 11.09** (subject to the terms of **Section 2.15**) or

(iv) any Lender from filing proofs of claim (and voting its claims) or appearing and filing pleadings on its own behalf during the pendency of a case or proceeding relative to the Borrower or any other Loan Party under any Debtor Relief Law;

provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (A) the Required Lenders shall have the rights otherwise provided to the Administrative Agent pursuant to **Article IX** and (B) in addition to the matters set forth in **clauses (ii), (iii)** and **(iv)** of the preceding proviso and subject to **Section 2.15**, any Lender may, with the consent of the Required Lenders, enforce any rights or remedies available to it and as authorized by the Required Lenders.

Section 11.04 Attorney Costs and Expenses.

The Borrower agrees

(a) if the Closing Date occurs, to pay or reimburse the Administrative Agent, the Collateral Agent, the Lead Arrangers, the Supplemental Administrative Agents, the Lenders, the Issuing Banks and the Swing Line Lender for all reasonable and documented in reasonable detail out-of-pocket expenses incurred on or after the Closing Date in connection with the preparation, execution, delivery and administration of this Agreement and the other Loan Documents and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), limited, in the case of legal fees and expenses, to the Attorney Costs of one primary counsel and, if reasonably necessary, one local counsel in each relevant jurisdiction material to the interests of the Lenders taken as a whole (which may be a single local counsel acting in multiple material jurisdictions), and

(b) to pay or reimburse the Administrative Agent, the Collateral Agent, the Lead Arrangers, the Supplemental Administrative Agents, the Issuing Banks, the Swing Line Lender and the Lenders for all reasonable and documented in reasonable detail out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any case or proceeding under the Bankruptcy Code or any other Debtor Relief Law) and all Attorney Costs of one counsel to the Administrative Agent, the Collateral Agent, the Lead Arrangers, the Supplemental Administrative Agents, the Issuing Banks, the Swing Line Lender and the Lenders taken as a whole (and, if reasonably necessary, one local counsel in any relevant material jurisdiction (which may be a single local counsel acting in multiple material jurisdictions) and, solely in the event of an actual or potential conflict of interest between the Administrative Agent, the Collateral Agent, the Lead Arrangers, the Supplemental

Administrative Agents, the Issuing Banks, the Swing Line Lender and the Lenders, where the Person or Persons affected by such conflict of interest inform the Borrower in writing of such conflict of interest, one additional counsel in each relevant material jurisdiction to each group of affected Persons similarly situated taken as a whole)).

The agreements in this **Section 11.04** shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under this **Section 11.04** shall be paid promptly following receipt by the Borrower of an invoice relating thereto setting forth such expenses in reasonable detail. If the Borrower fails to pay when due any costs, expenses or other amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of the Borrower by the Administrative Agent in its sole discretion. Expenses shall be deemed to be documented in reasonable detail only if they provide the detail required to enable the Borrower, acting in good faith, to determine that such expenses relate to the activities with respect to which reimbursement is required hereunder. The Borrower and each other Loan Party hereby acknowledge that the Administrative Agent and/or any Lender may receive a benefit, including a discount, credit or other accommodation, from any of such counsel based on the fees such counsel may receive on account of their relationship with the Administrative Agent and/or such Lender, including fees paid pursuant to this Agreement or any other Loan Document.

Section 11.05 Indemnification by the Borrower. The Borrower shall indemnify and hold harmless the Administrative Agent, any Supplemental Administrative Agent, the Collateral Agent, the Issuing Banks, the Swing Line Lender, each Lender, each Lead Arranger, each Joint Bookrunner and their respective Affiliates, fronting banks, confirming banks, advising banks, directors, officers, employees, agents, advisors, partners, trustees, controlling persons, and other representatives of each of the foregoing (collectively, the “*Indemnitees*”) from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (but limited, in the case of legal fees and expenses, to the Attorney Costs of one counsel to all Indemnitees taken as a whole and, if reasonably necessary, a single local counsel for all Indemnitees taken as a whole in each relevant jurisdiction that is material to the interest of such Indemnitees (which may be a single local counsel acting in multiple material jurisdictions), and solely in the case of an actual or potential conflict of interest between Indemnitees (where the Indemnitee affected by such conflict of interest informs the Borrower in writing of such conflict of interest), one additional counsel in each relevant jurisdiction to each group of affected Indemnitees similarly situated taken as a whole),

(a) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby (including the reliance in good faith by any Indemnitee on any notice purportedly given by or on behalf of the Borrower or any Loan Party),

(b) the Transactions,

(c) any Commitment, Loan, Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any Issuing Bank to honor a demand for payment under a

Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit),

(d) any actual or alleged presence or release of, or exposure to, any Hazardous Materials on or from any property currently or formerly owned or operated by the Borrower or any other Loan Party, or any Environmental Claim or Environmental Liability arising out of the activities or operations of or otherwise related to the Borrower or any other Loan Party, or

(e) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnitee is a party thereto or such claim, litigation, investigation or proceeding is by or against the Borrower or any Affiliate thereof;

(all the foregoing, collectively, the “*Indemnified Liabilities*”); *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that a court of competent jurisdiction determines in a final-non-appealable judgment that any such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements resulted from

(i) the gross negligence, bad faith or willful misconduct of such Indemnitee or of any Related Indemnified Person of such Indemnitee,

(ii) other than with respect to the Administrative Agent, the Collateral Agent and each Agent-Related person, a material breach of any obligations of such Indemnitee under any Loan Document by such Indemnitee or Related Indemnified Person,

(iii) any dispute solely among Indemnitees or of any Related Indemnified Person of such Indemnitee other than any claims against an Indemnitee in its capacity or in fulfilling its role as the Administrative Agent, the Collateral Agent, an Issuing Bank, the Swing Line Lender or a Lead Arranger (or other Agent role) under the Facility and other than any claims arising out of any act or omission of the Borrower or any of its Affiliates.

To the extent that the undertakings to indemnify and hold harmless set forth in this **Section 11.05** may be unenforceable in whole or in part because they are violative of any applicable Law or public policy, the Borrower shall contribute the maximum portion that it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through Merrill Datasite One, Syndtrak or IntraLinks or other similar information transmission systems in connection with this Agreement, except to the extent resulting from the willful misconduct, bad faith or gross negligence of such Indemnitee or any Related Indemnified Person (as determined by a final and non-appealable judgment of a court of competent jurisdiction), nor shall any Indemnitee or any Loan Party have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date) (other than, in the case of any Loan Party, in respect of any such damages incurred or paid by an Indemnitee to a third party). In

the case of an investigation, litigation or other proceeding to which the indemnity in this **Section 11.05** applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents is consummated. All amounts due under this **Section 11.05** (after the determination of a court of competent jurisdiction, if required pursuant to the terms of this **Section 11.05**) shall be paid within twenty Business Days after written demand therefor. The agreements in this **Section 11.05** shall survive the resignation of the Administrative Agent, the Collateral Agent, the Swing Line Lender or any Issuing Bank, replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations. This **Section 11.05** shall not apply to Taxes, except it shall apply to any Taxes that represent losses, claims, damages, etc. arising from a non-Tax claim (including a value added tax or similar tax charged with respect to the supply of legal or other services) without duplication of any other indemnification or payments made by the Loan Parties. For the avoidance of doubt and without limiting the foregoing obligations in any manner, none of the Sponsors, nor any of their respective Affiliates, nor any other Affiliate of the Borrower (other than its Restricted Subsidiaries) shall have any liability under this **Section 11.05**, and each is hereby released from any liability arising from the Transactions or any other transaction explicitly permitted (or not prohibited) by the Loan Documents.

Section 11.06 **Marshaling; Payments Set Aside.** None of the Administrative Agent, any Lender, the Collateral Agent or any Issuing Bank shall be under any obligation to marshal any assets in favor of the Loan Parties or any other Person or against or in payment of any or all of the Obligations. To the extent that any payment by or on behalf of the Borrower is made to any Agent, any Lender or any Issuing Bank (or to the Administrative Agent, on behalf of any Lender or any Issuing Bank), or any Agent or any Lender enforces any security interests or exercises its right of setoff, and such payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be or avoided as fraudulent or preferential or a transfer at undervalue, set aside and/or required (including pursuant to any settlement entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver, interim receiver, receiver and manager, monitor or any other party, in connection with any case or proceeding under any Debtor Relief Law or otherwise, then

(a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred and

(b) each Lender and each Issuing Bank severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, *plus* interest thereon from the date of such demand to the date such payment is made at a rate *per annum* equal to the Federal Funds Rate from time to time in effect.

Section 11.07 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not, except as permitted by **Section 7.04**, assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except,

- (i) to an assignee in accordance with the provisions of **subsection (b)** of this **Section 11.07**,
- (ii) by way of participation in accordance with the provisions of **subsection (d)** of this **Section 11.07**,
- (iii) by way of pledge or assignment of a security interest subject to the restrictions of **subsection (f)** of this **Section 11.07**, or
- (iv) to an SPC in accordance with the provisions of **subsection (g)** of this **Section 11.07** (and any other attempted assignment or transfer by any party hereto shall be null and void).

Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in **subsection (d)** of this **Section 11.07** and, to the extent expressly contemplated hereby, the Agent-Related Persons of each of the Administrative Agent, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lenders.** Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement, including all or a portion of its Commitment and the Loans (including for purposes of this **Section 11.07(b)**, participations in Letters of Credit, Swing Line Loans and Protective Advances) at the time owing to it; *provided* that any such assignment shall be subject to the following conditions:

- (i) **Minimum Amounts.**
 - (a) in the case of an assignment of the entire remaining amount of the assigning Lender's Revolving Commitment and Revolving Loans at the time held by it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and
 - (b) with respect to any assignment not described in **subsection (b)(i)(A)** of this Section, such assignment shall be in an aggregate amount of not less than \$5,000,000, unless each of the Administrative Agent, and so long as no Specified Event of Default has occurred and is continuing at the time of such assignment, the Borrower otherwise consents (such consent not to be unreasonably withheld or delayed).

(ii) **Proportionate Amounts.** Each partial assignment of Revolving Commitments and/or Revolving Loans shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Revolving Commitments and/or Revolving Loans being assigned, except that this **clause (ii)** shall not (x) apply to the Swing Line Lender's rights and obligations in respect of Swing Line Loans or (y) prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis.

(iii) **Required Consents.** No consent shall be required for any assignment except to the extent required by **Section 11.07(b)(i)(B)** and the following:

(a) the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed) shall be required unless (1) a Specified Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is made with respect to Revolving Commitments and Revolving Loans, to a Revolving Lender or an Affiliate of the assigning Revolving Lender;

(b) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund;

(c) with respect to assignments of Revolving Loans and/or Revolving Commitments, the Swing Line Lender (such consent not to be unreasonably withheld, conditioned or delayed); and

(d) with respect to assignments of Revolving Loans and/or Revolving Commitments, each Issuing Bank (such consent not to be unreasonably withheld, conditioned or delayed).

(iv) **Assignment and Assumption.** The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; **provided** that (A) the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment and (B) no processing and recordation fee shall be payable in connection with an assignments by or to a Lead Arranger or its Affiliates or branches. The Eligible Assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and any tax forms required under **Section 3.01(b), (c), (d) and (e)**, as applicable. Upon receipt of the processing and recordation fee and any written consent to assignment required by **Section 11.07(b)(iii)**, the Administrative Agent shall promptly accept such Assignment and Assumption and record the information contained therein in the Register.

(v) **No Assignments to Certain Persons.** No such assignment shall be made,

(a) to the Borrower or any of the Borrower's Subsidiaries,

(b) to any of the Borrower's Affiliates (other than any of the Borrower's Subsidiaries),

(c) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing persons described in this **clause (v)**,

(d) to a natural person or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person, or

(e) to a Disqualified Lender (subject to the Disqualified Lender Provisions) or Lender who has become a Disqualified Lender (subject to the Disqualified Lender Provisions).

To the extent that any assignment is purported to be made to a Disqualified Lender, such transaction shall be subject to the applicable provisions of **Section 11.27**.

(vi) ***Defaulting Lenders Assignments***. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the Issuing Banks, the Swing Line Lender and each other Lender hereunder (and interest accrued thereon), and (B) acquire (and fund as appropriate) its full Pro Rata Share of all Loans and participations in Letters of Credit, Swing Line Loans and Protective Advances. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to **clause (c)** of this **Section 11.07**, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement (except in the case of an assignment to or purchase by the Borrower or any of the Borrower's Subsidiaries) and, to the extent of the interest assigned by such Assignment and Assumption and as permitted by this **Section 11.07**, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of **Sections 3.01, 3.04, 3.05, 11.04** and **11.05** with respect to facts and circumstances occurring prior to the effective date of such assignment); ***provided*** that anything contained in any of the Loan Documents to the contrary notwithstanding, each Issuing Bank shall continue to have all rights and obligations with respect to any Letters of Credit issued by it until the cancellation or expiration of such Letters of Credit

and the reimbursement of any amounts drawn thereunder. Upon request, and the surrender by the assigning Lender of its applicable Notes, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **subsection (d)** of this **Section 11.07**.

(c) **Register.** The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts and stated interest of the Loans and Letter of Credit Obligations (specifying the Reimbursement Obligations), Letter of Credit Borrowings and other amounts due under **Section 2.04** owing to each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower or any Lender (but only, in the case of a Lender at the Administrative Agent's Office and with respect to any entry relating to such Lender's Commitments, Loans, Letter of Credit Obligations and other Obligations), at any reasonable time and from time to time upon reasonable prior notice. This **Section 11.07(c)** shall be construed so that all Loans are at all times maintained in "registered form" within the meaning of **Sections 163(f)**, 871(h)(2) and 881(c)(2) of the Code and any related United States Treasury regulations (or any other relevant or successor provisions of the Code or of such United States Treasury regulations).

(d) **Participations.** Any Lender may at any time, without the consent of, or notice to, the Borrower, the Administrative Agent, the Issuing Banks, the Swing Line Lender or any other Person sell participations (a "**Participation**") to any Person (other than to (1) a natural person, a Disqualified Lender (subject to the Disqualified Lender Provisions), (2) the Borrower or any of the Borrower's Affiliates or Subsidiaries or (3) any Person described in the proviso to the definition of "**Eligible Assignee**") (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans, and other Obligations (including such Lender's participations in Letters of Credit, Swing Line Loans and/or Protective Advances) owing to it); **provided** that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or any other Loan Document; **provided** that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in **Section 11.01(b)(i)**, **Section 11.01(b)(ii)**, **Section 11.01(b)(iv)**, **Section 11.01(b)(v)** or **Section 11.01(b)(vi)** that directly and adversely affects such Participant. Subject to **subsection (e)** of this **Section 11.07**, the Borrower agrees that each Participant shall be entitled to the benefits of

Sections 3.01 (subject to the requirements of **Section 3.01(b), (c), (d)** and **(e)**, as applicable (it being understood that the documentation required under such Sections shall be delivered to the participating Lender)), **3.04** and **3.05** (through the applicable Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **subsection (b)** of this **Section 11.07**. To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of **Section 11.09** as though it were a Lender; *provided* that such Participant agrees to be subject to **Section 2.12** as though it were a Lender. To the extent that any participation is purported to be made to a Disqualified Lender, such transaction shall be subject to the applicable provisions of **Section 11.27**.

(e) **Limitations upon Participant Rights.** A Participant shall not be entitled to receive any greater payment under **Section 3.01, 3.04** or **3.05** than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent, such consent not to be unreasonably withheld or delayed or such entitlement to a greater payment results from a change in law that occurs after the Participant acquired the participation. Each Lender that sells a participation or has a loan funded by an SPC shall (acting solely for this purpose as a non-fiduciary agent of the Borrower) maintain a register complying with the requirements of Sections 163(f), 871(h) and 881(c)(2) of the Code and the Treasury regulations (or any other relevant or successor provisions of the Code or of such United States Treasury regulations) issued thereunder relating to the exemption from withholding for portfolio interest on which is entered the name and address of each Participant or SPC and the principal amounts (and stated interest) of each Participant's or SPC's interest in the Loans or other obligations under this Agreement (the "**Participant Register**"). A Lender shall not be obligated to disclose the Participant Register to any Person except to the extent such disclosure is necessary to establish that any Loan or other obligation is in registered form under Section 5f.103-1(c) or proposed Section 1.163-5(b) of the United States Treasury regulations (or any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(f) **Liens on Loans.** Any Lender may, at any time without the consent of the Borrower or the Administrative Agent, pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Notes, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or any other central bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) **Special Purpose Funding Vehicles.** Notwithstanding anything to the contrary contained herein, any Lender (a "**Granting Lender**") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower (an "**SPC**") the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; *provided* that

(i) nothing herein shall constitute a commitment by any SPC to fund any Loan, and

(ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. Each party hereto hereby agrees that

(a) neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement (including its obligations under **Sections 3.01, 3.04 and 3.05**),

(b) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and

(c) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the lender of record hereunder.

The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior debt of any SPC, it will not institute against, or join any other Person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency, receivership or liquidation proceeding under the laws of the United States or any State thereof or any Debtor Relief Law or other applicable Law. Notwithstanding anything to the contrary contained herein, any SPC may

(1) with notice to, but without prior consent of the Borrower and the Administrative Agent and with the payment of a processing fee of \$3,500 (which processing fee may be waived by the Administrative Agent in its sole discretion), assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and

(2) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.

(h) [Reserved].

(i) [Reserved].

(j) [Reserved].

(k) **Resignation of Swing Line Lender.** Notwithstanding anything to the contrary contained herein, the Swing Line Lender may, upon thirty days' notice to the Borrower and the Revolving Lenders, resign as the Swing Line Lender; *provided* that on or prior to the expiration of such 30-day period with respect to such resignation, the Swing Line Lender shall have identified a successor Swing Line Lender reasonably acceptable to the Borrower willing to accept its appointment as successor Swing Line Lender hereunder. In the event of any such resignation of

the Swing Line Lender, the Borrower shall be entitled to appoint from among the Lenders willing to accept such appointment a successor Swing Line Lender hereunder; **provided** that no failure by the Borrower to appoint any such successor shall affect the resignation of the Swing Line Lender except as expressly provided above. If the Swing Line Lender resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to **Section 2.03(c)**. Upon the appointment by the Borrower of a successor Swing Line Lender hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Swing Line Lender and (ii) the retiring Swing Line Lender shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents.

(l) [Reserved].

Section 11.08 Confidentiality. Each of the Administrative Agent, the Collateral Agent, the Lead Arrangers, the Issuing Banks and the Lenders agrees to maintain the confidentiality of the Information in accordance with its customary procedures (as set forth below), except that Information may be disclosed,

(a) to its Affiliates and branches and to its and its Affiliates' and branches' respective partners, directors, officers, employees, agents, trustees, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential and in no event shall such disclosure be made to any Disqualified Lender pursuant to this **clause (a)** but only to the extent that a list of such Disqualified Lenders is available to all Lenders upon request),

(b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including the Federal Reserve Bank or any other central bank or any self-regulatory authority, such as the National Association of Insurance Commissioners),

(c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, **provided** that the Administrative Agent, the Collateral Agent, such Lead Arranger or such Lender or such Issuing Bank, as applicable, agrees that it will notify the Borrower as soon as practicable in the event of any such disclosure by such Person (other than at the request of a regulatory authority) unless such notification is prohibited by law, rule or regulation,

(d) to any other party hereto (it being understood that in no event shall such disclosure be made to any Disqualified Lender pursuant to this **clause (d)** but only to the extent that a list of such Disqualified Lenders is available to all Lenders upon request),

(e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder,

(f) subject to an agreement containing provisions at least as restrictive as those of this **Section 11.08** (it being understood that in no event shall such disclosure be made to any

Disqualified Lender pursuant to this **clause (f)** but only to the extent that a list of such Disqualified Lenders is available to all Lenders upon request), to (i) any *bona fide* assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be an Additional Lender, (ii) any actual or prospective direct or indirect counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower or any of its Subsidiaries or any of their respective obligations or (iii) any provider of credit risk protection,

(g) with the prior written consent of the Borrower,

(h) to any rating agency when required by it (it being understood that, prior to any such disclosure, that such Lender shall instruct such rating agency to and such rating agency shall undertake to preserve the confidentiality of any Information relating to the Loan Parties received by it from such Lender), or

(i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this **Section 11.08** or (ii) becomes available to the Administrative Agent, the Collateral Agent, any Lead Arranger, any Lender, any Issuing Bank, or any of their respective Affiliates or branches on a non-confidential basis from a source other than the Borrower or any of its Affiliates, and which source is not known by such Person to be subject to a confidentiality restriction in respect thereof in favor of the Borrower or any Affiliate of the Borrower.

In addition, each of the Administrative Agent, the Collateral Agent, the Lead Arrangers, the Issuing Banks and the Lenders may disclose the existence of this Agreement and the information about this Agreement to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Loans, market data collectors, similar service providers to the lending industry, and service providers to the Administrative Agent, the Collateral Agent, the Lead Arrangers, the Issuing Banks and the Lenders in connection with the administration and management of this Agreement and the other Loan Documents.

For purposes of this **Section 11.08**, “*Information*” means all information received from or on behalf of any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary thereof or their respective businesses, other than any such information that is available to the Administrative Agent, the Collateral Agent or any Lender on a non-confidential basis prior to disclosure by any Loan Party or any Subsidiary thereof; it being understood that all information received from the Borrower or any Subsidiary after the date hereof shall be deemed confidential unless such information is clearly identified at the time of delivery as not being confidential. Any Person required to maintain the confidentiality of Information as provided in this **Section 11.08** shall be considered to have complied with its obligation to do so in accordance with its customary procedures if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Collateral Agent, the Lead Arrangers and the Lenders acknowledges that (A) the Information may include Private-Side Information concerning the Borrower or a Subsidiary, as the case may be and (B) it has developed compliance procedures regarding the use of Private-Side Information.

Notwithstanding anything to the contrary therein, nothing in any Loan Document shall require the Borrower or any of its Affiliates or other subsidiaries to provide information (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure is prohibited by applicable Law, (iii) that is subject to attorney client or similar privilege or constitutes attorney work product or (iv) the disclosure of which is restricted by binding agreements not entered into primarily for the purpose of qualifying for the exclusion in this **clause (iv)**.

Section 11.09 Set-off. If an Event of Default shall have occurred and be continuing, each Lender and each Issuing Bank and each of their respective Affiliates and branches is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, without notice to any Loan Party or to any other Person (other than the Administrative Agent), any such notice being hereby expressly waived, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or such Issuing Bank or any such Affiliate or branch to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or such Issuing Bank, the Letters of Credit and participations therein, irrespective of whether or not (a) such Lender or such Issuing Bank shall have made any demand under this Agreement or any other Loan Document and (b) the principal of or the interest on the Loans or any amounts in respect of the Letters of Credit or any other amounts due hereunder shall have become due and payable pursuant to **Article II** and although such obligations of the Borrower or such Loan Party may be contingent or unmaturing or are owed to a branch or office of such Lender or such Issuing Bank different from the branch or office holding such deposit or obligated on such indebtedness; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (i) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of **Sections 2.15** and **2.19** and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Banks, and the Lenders, and (ii) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and each Issuing Bank and their respective Affiliates under this **Section 11.09** are in addition to other rights and remedies (including other rights of set-off) that such Lender or such Issuing Bank or Affiliates or branches may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such set-off and application, *provided* that the failure to give such notice shall not affect the validity of such set-off and application.

Section 11.10 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents with respect to any of the Obligations, shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "**Maximum Rate**"). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a)

characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder. If the rate of interest under this Agreement at any time exceeds the Maximum Rate, the outstanding amount of the Loans made hereunder shall bear interest at the Maximum Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, the Borrower shall pay to the Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Maximum Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of the Lenders and the Borrower to conform strictly to any applicable usury laws.

Section 11.11 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging (including in.pdf or .tif format) means shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 11.12 Electronic Execution of Assignments and Certain Other Documents. The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption, in or related to this Agreement or any other document to be signed in connection with this Agreement and the transactions contemplated hereby or in any amendment or other modification hereof (including without any limitation Assignment and Assumptions, amendments or other Committed Loan Notices, Swing Line Loan Requests, waivers and consents) shall be deemed to include electronic signatures, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; **provided** that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

Section 11.13 Survival. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent, each Issuing Bank and each Lender, regardless of any investigation made by the Administrative Agent,

any Issuing Bank or any Lender or on their behalf and notwithstanding that the Administrative Agent, any Issuing Bank or any Lender may have had notice or knowledge of any Default at the time of any Borrowing or issuance of a Letter of Credit, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit remain outstanding. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Loan Party set forth in **Sections 3.01, 3.04, 3.05, 11.04, 11.05, 11.06 and 11.09** and the agreements of the Lenders set forth in **Sections 2.15, 10.03 and 10.07** shall survive the satisfaction of the Termination Conditions, and the termination hereof.

Section 11.14 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable in any jurisdiction, (a) the legality, validity and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this **Section 11.14**, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, any Issuing Bank or the Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

Section 11.15 GOVERNING LAW.

(a) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER (INCLUDING ANY CLAIMS SOUNDING IN CONTRACT LAW OR TORT LAW ARISING OUT OF THE SUBJECT MATTER HEREOF AND ANY DETERMINATIONS WITH RESPECT TO POST-JUDGMENT INTEREST) AND EACH OTHER LOAN DOCUMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(b) BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY, EACH LEAD ARRANGER) IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK CITY IN THE BOROUGH OF MANHATTAN AND OF ANY UNITED STATES FEDERAL COURT SITTING IN THE BOROUGH OF MANHATTAN, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (OTHER THAN WITH RESPECT TO ACTIONS BY ANY AGENT IN RESPECT OF RIGHTS UNDER ANY COLLATERAL DOCUMENT OR ANY OTHER LOAN DOCUMENT GOVERNED BY A LAW OTHER THAN THE LAWS OF THE STATE OF NEW YORK OR WITH RESPECT TO ANY COLLATERAL SUBJECT THERETO), OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY, EACH LEAD ARRANGER)

IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY, EACH LEAD ARRANGER) AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. EACH PARTY HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY, EACH LEAD ARRANGER) AGREES THAT THE AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER THIS AGREEMENT, ANY COLLATERAL DOCUMENT OR ANY OTHER LOAN DOCUMENT OR THE ENFORCEMENT OF ANY JUDGMENT.

(c) EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS **SECTION 11.15**. EACH OF THE PARTIES HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY, EACH LEAD ARRANGER) HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

Section 11.16 **WAIVER OF RIGHT TO TRIAL BY JURY.** EACH PARTY HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY, EACH LEAD ARRANGER) HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY, EACH LEAD ARRANGER) (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS

BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS **SECTION 11.16**, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY, EACH LEAD ARRANGER) FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS **SECTION 11.16** AND EXECUTED BY EACH OF THE PARTIES HERETO AND THE LEAD ARRANGERS), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 11.17 **Limitation of Liability.** The Loan Parties agree that no Indemnitee shall have any liability (whether in contract, tort or otherwise) to any Loan Party or any of their respective Subsidiaries or any of their respective equity holders or creditors for or in connection with the transactions contemplated hereby and in the other Loan Documents, except to the extent such liability is determined in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnitee's gross negligence or willful misconduct or bad faith or material breach by such Indemnitee of its obligations under this Agreement. In no event, shall any party hereto, any Loan Party or any Indemnitee be liable on any theory of liability for any special, indirect, consequential or punitive damages (including any loss of profits, business or anticipated savings) (other than, in the case of the Loan Parties, in respect of any such damages incurred or paid by an Indemnitee to a third party). Each party hereto (and by its acceptance of its appointment in such capacity, each Lead Arranger) hereby waives, releases and agrees (each for itself and on behalf of its Subsidiaries) not to sue upon any such claim for any special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

Section 11.18 **Use of Name, Logo, Etc.** Each Loan Party consents to the publication in the ordinary course by the Administrative Agent or any Lead Arranger of customary advertising material relating to the financing transactions contemplated by this Agreement using such Loan Party's name, product photographs, logo or trademark; ***provided*** that any such trademarks or logos are used solely in a manner that is not intended to or reasonably likely to harm or disparage the Borrower or any of its Subsidiaries or the reputation or goodwill of any of them. Such consent shall remain effective until revoked by such Loan Party in writing to the Administrative Agent and such Lead Arranger, as applicable.

Section 11.19 **USA PATRIOT Act Notice.**

Each Lender that is subject to the USA PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies each Loan Party that pursuant to the

requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act. Each Loan Party shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act.

Section 11.20 Service of Process. EACH PARTY HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY, EACH LEAD ARRANGER) IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN **SECTION 11.02**. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

Section 11.21 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Loan Party acknowledges and agrees, and acknowledges its Affiliates’ understanding that:

(a) (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm’s-length commercial transactions between the Agents, the Lenders, the Issuing Banks, the Swing Line Lender and the Lead Arrangers on the one hand, and the Loan Parties and their Affiliates, on the other hand,

(ii) each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and

(iii) each of the Loan Parties is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents;

(b) (i) the Agents, the Issuing Banks, the Swing Line Lender and the Lead Arrangers are and have been, and each Lender is and has been, acting solely as a principal and, except as expressly agreed in writing by the relevant parties, have or has not been, are or is not, and will not be acting as an advisor, agent or fiduciary for the Loan Parties, its stockholders or its Affiliates (irrespective of whether any Lender has advised, is currently advising or will advise any Loan Party, its stockholders or its Affiliates on other matters), or any other Person and

(ii) none of the Agents, the Issuing Banks, the Swing Line Lender, the Lead Arrangers nor any Lender has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and

(c) the Agents, the Issuing Banks, the Swing Line Lender, the Lead Arrangers, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve economic interests that conflict with those of the Loan Parties, their stockholders and/or their

affiliates, and none of the Agents, the Issuing Banks, the Swing Line Lender, the Lead Arrangers nor any Lender has any obligation to disclose any of such interests to the Borrower or any of its Affiliates.

Each Loan Party agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and such Loan Party, its stockholders or its affiliates, on the other. To the fullest extent permitted by law, each Loan Party hereby waives and releases any claims that it may have against the Agents, the Issuing Banks, the Swing Line Lender, the Lead Arrangers or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 11.22 Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower and the Administrative Agent and the Administrative Agent shall have been notified by each Lender and each Issuing Bank that each such Lender or each such Issuing Bank has executed it and thereafter shall be binding upon and inure to the benefit of the Borrower, each Agent, each Lender and each Issuing Bank and their respective successors and assigns.

Section 11.23 Obligations Several; Independent Nature of Lender's Rights. The obligations of the Lenders hereunder are several and not joint and no Lender shall be responsible for the obligations or Commitments of any other Lender hereunder. Nothing contained herein or in any other Loan Document, and no action taken by the Lenders pursuant hereto or thereto, shall be deemed to constitute the Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising out hereof and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

Section 11.24 Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

Section 11.25 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

- (i) a reduction in full or in part or cancellation of any such liability;
- (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
- (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

Section 11.26 Acknowledgement Regarding Any Supported QFCs.

(a) To the extent that the Loan Documents provide support, through a guarantee or otherwise (including the Guaranty), for any Hedge Agreement or any other agreement or instrument that is a QFC (such support, “**QFC Credit Support**”, and each such QFC, a “**Supported QFC**”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “**U.S. Special Resolution Regimes**”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States).

(b) In the event a Covered Entity that is party to a Supported QFC (each, a “**Covered Party**”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

Section 11.27 Disqualified Lenders.

(a) **Replacement of Disqualified Lenders.**

(i) To the extent that any assignment or participation is made or purported to be made to a Disqualified Lender (notwithstanding the other restrictions in this Agreement

with respect to Disqualified Lenders), or if any Lender or Participant becomes a Disqualified Lender, in each case, without limiting any other provision of the Loan Documents,

(a) upon the request of the Borrower, such Disqualified Lender shall be required immediately (and in any event within five Business Days) to assign all or any portion of the Loans and Commitments then owned by such Disqualified Lender (or held as a participation) to another Lender (other than a Defaulting Lender or another Disqualified Lender), Eligible Assignee or the Borrower, and

(b) the Borrower shall have the right to prepay all or any portion of the Loans and Commitments then owned by such Disqualified Lender (or held as a participation), and if applicable, terminate the Commitments of such Disqualified Lender, in whole or in part.

(ii) Any such assignment or prepayment shall be made in exchange for an amount equal to the lesser of (A) the face principal amount of the Loans so assigned, (B) the amount that such Disqualified Lender paid to acquire such Commitments and/or Loans and (C) the then-quoted trading price for such Loans or Participations, in each case without interest thereon (it being understood that if the effective date of any such assignment is not an interest payment date, such assignee shall be entitled to receive on the next succeeding interest payment date interest on the principal amount of the Loans so assigned that has accrued and is unpaid from the interest payment date last preceding such effective date (except as may be otherwise agreed between such assignee and the Borrower)).

(iii) The Borrower shall be entitled to seek specific performance in any applicable court of law or equity to enforce this **Section 11.27**. In addition, in connection with any such assignment, (A) if such Disqualified Lender does not execute and deliver to the Administrative Agent a duly completed Assignment and Assumption and/or any other documentation necessary or appropriate (in the good faith determination of the Administrative Agent or the Borrower, which determination shall be conclusive) to reflect such replacement by the later of (1) the date on which the replacement Lender executes and delivers such Assignment and Assumption and/or such other documentation and (2) the date as of which such Disqualified Lender shall be paid by the assignee Lender (or, at its option, the Borrower) the amount required pursuant to this section, then such Disqualified Lender shall be deemed to have executed and delivered such Assignment and Assumption and/or such other documentation as of such date and the Borrower shall be entitled (but not obligated) to execute and deliver such Assignment and Assumption and/or such other documentation on behalf of such Disqualified Lender, and the Administrative Agent shall record such assignment in the Register, (B) each Lender (whether or not then a party hereto) agrees to disclose to the Borrower the amount that the applicable Disqualified Lender paid to acquire Commitments and/or Loans from such Lender and (C) each Lender that is a Disqualified Lender agrees to disclose to the Borrower the amount it paid to acquire the Commitments and/or Loans held by it.

(b) **Amendments, Consents and Waivers under the Loan Documents.** No Disqualified Lender shall have the right to approve or disapprove any amendment, waiver or

consent pursuant to **Section 11.01** or under any Loan Document. In connection with any determination as to whether the requisite Lenders (including whether the Required Lenders or Required Facility Lenders) have provided any amendment, waiver or consent pursuant to **Section 11.01** or under any other Loan Document:

(i) Disqualified Lenders shall not be considered, and

(ii) Disqualified Lenders shall be deemed to have consented to any such amendment, waiver or consent with respect to its interest as a Lender in the same proportion as the allocation of voting with respect to such matter by Lenders who are not Disqualified Lenders;

provided that (A) the Commitment of any Disqualified Lender may not be increased or extended without the consent of such Disqualified Lender and (B) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Disqualified Lender more adversely than other affected Lenders shall require the consent of such Disqualified Lender.

(c) **Limitation on Rights and Privileges of Disqualified Lenders.** Except as otherwise provided in **Section 11.27(b)(ii)**, no Disqualified Lenders shall have the right to, and each such Person covenants and agrees not to, instruct the Administrative Agent, Collateral Agent or any other Person in respect of the exercise of remedies with respect to the Loans or other Obligations. Further, no Disqualified Lender that purports to be a Lender or Participant (notwithstanding any provisions of this Agreement that may have prohibited such Disqualified Lender from becoming Lender or Participant) shall be entitled to any of the rights or privileges enjoyed by the other Lenders with respect to voting (other than to the extent provided in **Section 11.27(b)**), and shall be deemed for all purposes to be, at most, a Defaulting Lender until such time as such Disqualified Lender no longer owns any Loans or Commitments.

(d) **Survival.** The provisions of this **Section 11.27** shall apply and survive with respect to each Lender and Participant notwithstanding that any such Person may have ceased to be a Lender or Participant hereunder or this Agreement may have been terminated.

(e) **Administrative Agent.**

(i) **Reliance.** The Administrative Agent shall have no liability to the Borrower, any Lender or any other Person in acting in good faith on any notice of Default or acceleration.

(ii) **Disqualified Lender Lists.** The Administrative Agent shall have no responsibility or liability for monitoring or enforcing the list of Disqualified Lenders or for any assignment or participation to a Disqualified Lender.

(iii) **Liability Limitations.** The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Lenders. Without limiting the generality of the foregoing, the Administrative Agent shall not (A) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender

or Participant is a Disqualified Lender or (B) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information (including Information), to any Disqualified Lender. The list of Disqualified Lenders shall be specified on a schedule that is held with the Administrative Agent, which list may be provided to any Lender or its proposed assignee upon request.

[SIGNATURE PAGES ARE OMITTED]

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**CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Ronald Coughlin, Jr., certify that:

1.I have reviewed this Quarterly Report on Form 10-Q of Petco Health and Wellness Company, Inc.;

2.Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3.Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4.The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a)Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b)Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c)Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d)Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5.The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a)All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b)Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date:
December
7,
2023

By:
Ronald
Coughlin
Jr.
**Ronald
Coughlin
Jr.
Chief
Executive
Officer
(Principal
Executive
Officer)**

**CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Brian LaRose, certify that:

1.I have reviewed this Quarterly Report on Form 10-Q of Petco Health and Wellness Company, Inc.;

2.Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3.Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4.The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a)Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b)Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c)Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d)Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5.The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a)All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b)Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date:
December
7,
2023

By:
/s/
Brian
LaRose
**Brian
LaRose
Chief
Financial
Officer
(Principal
Financial
Officer
and
Principal
Account
Officer)**

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the accompanying Quarterly Report on Form 10-Q of Petco Health and Wellness Company, Inc. (the “Company”) for the quarter ended October 28, 2023, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Ronald Coughlin, Jr., Chief Executive Officer of the Company, hereby certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1)The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2)The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Date:
December
7,
2023

By:
Ronald
Coughlin
Jr.
**Ronald
Coughlin
Jr.**
**Chief
Executive
Officer
(Principal
Executive
Officer)**

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the accompanying Quarterly Report on Form 10-Q of Petco Health and Wellness Company, Inc. (the “Company”) for the quarter ended October 28, 2023, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Brian LaRose, Chief Financial Officer of the Company, hereby certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1)The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2)The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Date:
December
7,
2023

By:
/s/
Brian
LaRose
**Brian
LaRose
Chief
Financial
Officer
(Principal
Financial
Officer
and
Principal
Accounting
Officer)**

**Document and Entity
Information - shares**

**9 Months Ended
Oct. 28, 2023**

Dec. 05, 2023

Document Information [Line Items]

<u>Document Type</u>	10-Q
<u>Amendment Flag</u>	false
<u>Document Period End Date</u>	Oct. 28, 2023
<u>Document Fiscal Year Focus</u>	2023
<u>Document Fiscal Period Focus</u>	Q3
<u>Entity Registrant Name</u>	Petco Health and Wellness Company, Inc.
<u>Entity Central Index Key</u>	0001826470
<u>Entity Current Reporting Status</u>	Yes
<u>Entity Interactive Data Current</u>	Yes
<u>Current Fiscal Year End Date</u>	--02-03
<u>Entity Filer Category</u>	Large Accelerated Filer
<u>Entity Shell Company</u>	false
<u>Entity Small Business</u>	false
<u>Entity Emerging Growth Company</u>	false
<u>Title of 12(b) Security</u>	Class A Common Stock, par value \$0.001 per share
<u>Trading Symbol</u>	WOOF
<u>Security Exchange Name</u>	NASDAQ
<u>Entity File Number</u>	001-39878
<u>Entity Incorporation, State or Country Code</u>	DE
<u>Entity Tax Identification Number</u>	81-1005932
<u>Entity Address, Address Line One</u>	10850 Via Frontera
<u>Entity Address, City or Town</u>	San Diego
<u>Entity Address, State or Province</u>	CA
<u>Entity Address, Postal Zip Code</u>	92127
<u>City Area Code</u>	858
<u>Local Phone Number</u>	453-7845
<u>Document Quarterly Report</u>	true
<u>Document Transition Report</u>	false

Class A Common Stock

Document Information [Line Items]

<u>Entity Common Stock, Shares Outstanding</u>	230,697,818
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Class B-1 Common Stock

Document Information [Line Items]

<u>Entity Common Stock, Shares Outstanding</u>	37,790,781
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Class B-2 Common Stock

Document Information [Line Items]

<u>Entity Common Stock, Shares Outstanding</u>	37,790,781
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**CONSOLIDATED
BALANCE SHEETS - USD**
(\$)
\$ in Thousands

	Oct. 28, 2023	Jan. 28, 2023
<u>Current assets:</u>		
<u>Cash and cash equivalents</u>	\$ 139,782	\$ 201,901
<u>Receivables, less allowance for credit losses (\$1,897 and \$952, respectively)</u>	50,180	49,580
<u>Merchandise inventories, net</u>	730,148	652,430
<u>Prepaid expenses</u>	46,856	51,274
<u>Other current assets</u>	40,562	60,809
<u>Total current assets</u>	1,007,528	1,015,994
<u>Fixed assets</u>	2,142,520	1,987,560
<u>Less accumulated depreciation</u>	(1,314,721)	(1,184,233)
<u>Fixed assets, net</u>	827,799	803,327
<u>Operating lease right-of-use assets</u>	1,390,671	1,397,761
<u>Goodwill</u>	976,247	2,193,941
<u>Trade name</u>	1,025,000	1,025,000
<u>Other long-term assets</u>	199,316	176,806
<u>Total assets</u>	5,426,561	6,612,829
<u>Current liabilities:</u>		
<u>Accounts payable and book overdrafts</u>	486,634	381,213
<u>Accrued salaries and employee benefits</u>	100,997	89,929
<u>Accrued expenses and other liabilities</u>	215,875	217,556
<u>Current portion of operating lease liabilities</u>	305,975	309,766
<u>Current portion of long-term debt and other lease liabilities</u>	5,082	22,794
<u>Total current liabilities</u>	1,114,563	1,021,258
<u>Senior secured credit facilities, net, excluding current portion</u>	1,574,909	1,628,331
<u>Operating lease liabilities, excluding current portion</u>	1,148,958	1,148,155
<u>Deferred taxes, net</u>	270,841	303,121
<u>Other long-term liabilities</u>	124,436	130,487
<u>Total liabilities</u>	4,233,707	4,231,352
<u>Commitments and contingencies (Notes 4 and 8)</u>		
<u>Stockholders' equity:</u>		
<u>Preferred stock, \$0.001 par value: Authorized - 25.0 million shares; Issued and outstanding - none</u>		
<u>Additional paid-in-capital</u>	2,212,713	2,152,342
<u>(Accumulated deficit) retained earnings</u>	(1,024,667)	232,967
<u>Accumulated other comprehensive income (loss)</u>	4,540	(4,098)
<u>Total stockholders' equity</u>	1,192,854	2,381,477
<u>Total liabilities and stockholders' equity</u>	5,426,561	6,612,829
<u>Class A Common Stock</u>		
<u>Stockholders' equity:</u>		
<u>Common stock value</u>	230	228
<u>Class B-1 Common Stock</u>		

Stockholders' equity:

Common stock value

38

38

Class B-2 Common Stock

Stockholders' equity:

Common stock value

**CONSOLIDATED
BALANCE SHEETS
(Parentetical) - USD (\$)
\$ in Thousands**

Oct. 28, 2023 Jan. 28, 2023

<u>Allowance for credit loss, current</u>	\$ 1,897	\$ 952
<u>Preferred stock, par value per share</u>	\$ 0.001	\$ 0.001
<u>Preferred stock, shares authorized</u>	25,000,000.0	25,000,000.0
<u>Preferred stock, shares issued</u>	0	0
<u>Preferred stock, shares outstanding</u>	0	0
<u>Class A Common Stock</u>		
<u>Common stock, par value per share</u>	\$ 0.001	\$ 0.001
<u>Common stock, shares authorized</u>	1,000,000,000.0	1,000,000,000.0
<u>Common stock, shares, issued</u>	230,300,000	228,300,000
<u>Common stock, shares, outstanding</u>	230,300,000	228,300,000
<u>Class B-1 Common Stock</u>		
<u>Common stock, par value per share</u>	\$ 0.001	\$ 0.001
<u>Common stock, shares authorized</u>	75,000,000.0	75,000,000.0
<u>Common stock, shares, issued</u>	37,800,000	37,800,000
<u>Common stock, shares, outstanding</u>	37,800,000	37,800,000
<u>Class B-2 Common Stock</u>		
<u>Common stock, par value per share</u>	\$ 0.000001	\$ 0.000001
<u>Common stock, shares authorized</u>	75,000,000.0	75,000,000.0
<u>Common stock, shares, issued</u>	37,800,000	37,800,000
<u>Common stock, shares, outstanding</u>	37,800,000	37,800,000

**CONSOLIDATED
STATEMENTS OF
OPERATIONS - USD (\$)
shares in Thousands, \$ in
Thousands**

	3 Months Ended		9 Months Ended	
	Oct. 28, 2023	Oct. 29, 2022	Oct. 28, 2023	Oct. 29, 2022
<u>Total net sales</u>	\$ 1,494,166	\$ 1,501,220	\$ 4,580,808	\$ 4,458,008
<u>Total cost of sales</u>	944,165	903,543	2,833,321	2,658,180
<u>Gross profit</u>	550,001	597,677	1,747,487	1,799,828
<u>Selling, general and administrative expenses</u>	559,611	549,622	1,705,443	1,651,829
<u>Goodwill impairment</u>	1,222,524		1,222,524	
<u>Operating (loss) income</u>	(1,232,134)	48,055	(1,180,480)	147,999
<u>Interest income</u>	(1,139)	(130)	(3,079)	(287)
<u>Interest expense</u>	36,557	27,307	111,251	68,761
<u>Loss on partial extinguishment of debt</u>	174		920	
<u>Other non-operating (income) loss</u>	(113)	(576)	(4,727)	9,369
<u>(Loss) income before income taxes and income from equity method investees</u>	(1,267,613)	21,454	(1,284,845)	70,156
<u>Income tax (benefit) expense</u>	(22,902)	4,161	(17,178)	20,799
<u>Income from equity method investees</u>	(3,574)	(2,627)	(10,032)	(7,821)
<u>Net (loss) income</u>	(1,241,137)	19,920	(1,257,635)	57,178
<u>Net loss attributable to noncontrolling interest</u>				(891)
<u>Net (loss) income attributable to Class A and B-1 common stockholders</u>	\$ (1,241,137)	\$ 19,920	\$ (1,257,635)	\$ 58,069
<u>Net (loss) income per Class A and B-1 common share:</u>				
<u>Basic</u>	\$ (4.63)	\$ 0.07	\$ (4.71)	\$ 0.22
<u>Diluted</u>	\$ (4.63)	\$ 0.07	\$ (4.71)	\$ 0.22
<u>Weighted average shares used in computing net (loss) income per Class A and B-1 common share:</u>				
<u>Basic</u>	267,852	265,689	267,167	265,390
<u>Diluted</u>	267,852	265,935	267,167	265,824
<u>Products</u>				
<u>Total net sales</u>	\$ 1,257,803	\$ 1,295,771	\$ 3,852,997	\$ 3,868,659
<u>Total cost of sales</u>	787,994	759,303	2,366,472	2,229,311
<u>Services and other</u>				
<u>Total net sales</u>	236,363	205,449	727,811	589,349
<u>Total cost of sales</u>	\$ 156,171	\$ 144,240	\$ 466,849	\$ 428,869

**CONSOLIDATED
STATEMENTS OF
COMPREHENSIVE (LOSS)
INCOME - USD (\$)
\$ in Thousands**

3 Months Ended		9 Months Ended	
Oct. 28, 2023	Oct. 29, 2022	Oct. 28, 2023	Oct. 29, 2022

Statement of Comprehensive Income [Abstract]

<u>Net (loss) income</u>	\$		\$	
	(1,241,137)	\$ 19,920	(1,257,635)	\$ 57,178
<u>Net loss attributable to noncontrolling interest</u>			(891)	
<u>Net (loss) income attributable to Class A and B-1 common stockholders</u>	(1,241,137)	19,920	(1,257,635)	58,069
<u>Other comprehensive income (loss), net of tax:</u>				
<u>Foreign currency translation adjustment</u>	407	89	2,571	(2,284)
<u>Unrealized gain on derivatives</u>	2,628		5,559	
<u>(Gains) losses on derivatives reclassified to income</u>	(286)		508	
<u>Total other comprehensive income (loss), net of tax</u>	2,749	89	8,638	(2,284)
<u>Comprehensive (loss) income</u>	(1,238,388)	20,009	(1,248,997)	54,894
<u>Comprehensive loss attributable to noncontrolling interest</u>			(891)	
<u>Comprehensive (loss) income attributable to Class A and B-1 common stockholders</u>	\$ (1,238,388)	\$ 20,009	\$ (1,248,997)	\$ 55,785

CONSOLIDATED STATEMENTS OF EQUITY - USD (\$) shares in Thousands, \$ in Thousands	Total	Common Stock	Common	Common	Common	Additional Paid-in Capital	Retained Earnings (Accumulated Deficit)	Accumulated Other Comprehensive (Loss) Income	Total Stockholders'/Noncontrolling Members' Equity	Total Noncontrolling Interest
			Stock Class A Common Stock	Stock Class B-1 Common Stock	Stock Class B-2 Common Stock					
Beginning Balance at Jan. 29, 2022	\$ 2,255,819	\$ 265				\$ 2,133,821	\$ 142,166	\$ (2,238)	\$ 2,274,014	\$ (18,195)
Beginning Balance (in shares) at Jan. 29, 2022			227,187	37,791	37,791					
Equity-based compensation expense (Note 7)	12,055					12,055			12,055	
Net (loss) income	23,802						24,693		24,693	(891)
Foreign currency translation adjustment, net of tax	(1,598)							(1,598)	(1,598)	
Issuance of common stock, net of tax withholdings	(2,371)					(2,371)			(2,371)	
Issuance of common stock, net of tax withholdings (in shares)			291							
Ending Balance at Apr. 30, 2022	2,287,707	265				2,143,505	166,859	(3,836)	2,306,793	(19,086)
Ending Balance (in shares) at Apr. 30, 2022			227,478	37,791	37,791					
Beginning Balance at Jan. 29, 2022	2,255,819	265				2,133,821	142,166	(2,238)	2,274,014	(18,195)
Beginning Balance (in shares) at Jan. 29, 2022			227,187	37,791	37,791					
Net (loss) income	57,178									
Ending Balance at Oct. 29, 2022	2,327,909	266				2,131,930	200,235	(4,522)	2,327,909	
Ending Balance (in shares) at Oct. 29, 2022			227,943	37,791	37,791					
Beginning Balance at Jan. 29, 2022	2,255,819	265				2,133,821	142,166	(2,238)	2,274,014	(18,195)
Beginning Balance (in shares) at Jan. 29, 2022			227,187	37,791	37,791					
Ending Balance at Jan. 28, 2023	2,381,477	266				2,152,342	232,967	(4,098)	2,381,477	
Ending Balance (in shares) at Jan. 28, 2023			228,338	37,791	37,791					
Beginning Balance at Apr. 30, 2022	2,287,707	265				2,143,505	166,859	(3,836)	2,306,793	(19,086)
Beginning Balance (in shares) at Apr. 30, 2022			227,478	37,791	37,791					
Equity-based compensation expense (Note 7)	13,422					13,422			13,422	
Net (loss) income	13,456						13,456		13,456	
Foreign currency translation adjustment, net of tax	(775)							(775)	(775)	
Investment in veterinary joint venture	(35,000)					(54,086)			(54,086)	\$ 19,086
Issuance of common stock, net of tax withholdings	336	1				335			336	
Issuance of common stock, net of tax withholdings (in shares)			431							
Ending Balance at Jul. 30, 2022	2,279,146	266				2,103,176	180,315	(4,611)	2,279,146	
Ending Balance (in shares) at Jul. 30, 2022			227,909	37,791	37,791					
Equity-based compensation expense (Note 7)	16,069					16,069			16,069	
Net (loss) income	19,920						19,920		19,920	
Foreign currency translation adjustment, net of tax	89							89	89	

Deferred tax effect of investment in veterinary joint venture	12,807				12,807			12,807
Issuance of common stock, net of tax withholdings	(122)				(122)			(122)
Issuance of common stock, net of tax withholdings (in shares)		34						
Ending Balance at Oct. 29, 2022	2,327,909	266			2,131,930	200,235	(4,522)	2,327,909
Ending Balance (in shares) at Oct. 29, 2022			227,943	37,791	37,791			
Beginning Balance at Jan. 28, 2023	2,381,477	266			2,152,342	232,967	(4,098)	2,381,477
Beginning Balance (in shares) at Jan. 28, 2023			228,338	37,791	37,791			
Equity-based compensation expense (Note 7)	22,282				22,282			22,282
Net (loss) income	(1,892)					(1,892)		(1,892)
Foreign currency translation adjustment, net of tax	1,057					1,057		1,057
Unrealized gain (loss) on derivatives (Note 5), net of tax	(984)					(984)		(984)
Gains (Losses) on derivatives reclassified to income (Note 5), net of tax	433					433		433
Issuance of common stock, net of tax withholdings	(1,253)	1			(1,254)			(1,253)
Issuance of common stock, net of tax withholdings (in shares)			727					
Ending Balance at Apr. 29, 2023	2,401,120	267			2,173,370	231,075	(3,592)	2,401,120
Ending Balance (in shares) at Apr. 29, 2023			229,065	37,791	37,791			
Beginning Balance at Jan. 28, 2023	2,381,477	266			2,152,342	232,967	(4,098)	2,381,477
Beginning Balance (in shares) at Jan. 28, 2023			228,338	37,791	37,791			
Net (loss) income	(1,257,635)							
Unrealized gain (loss) on derivatives (Note 5), net of tax	5,559							
Gains (Losses) on derivatives reclassified to income (Note 5), net of tax	508							
Ending Balance at Oct. 28, 2023	1,192,854	268			2,212,713	(1,024,667)	4,540	1,192,854
Ending Balance (in shares) at Oct. 28, 2023			230,293	37,791	37,791			
Beginning Balance at Apr. 29, 2023	2,401,120	267			2,173,370	231,075	(3,592)	2,401,120
Beginning Balance (in shares) at Apr. 29, 2023			229,065	37,791	37,791			
Equity-based compensation expense (Note 7)	24,322				24,322			24,322
Net (loss) income	(14,606)					(14,606)		(14,606)
Foreign currency translation adjustment, net of tax	1,107					1,107		1,107
Unrealized gain (loss) on derivatives (Note 5), net of tax	3,915					3,915		3,915
Gains (Losses) on derivatives reclassified to income (Note 5), net of tax	361					361		361
Issuance of common stock, net of tax withholdings	(1,456)	1			(1,457)			(1,456)
Issuance of common stock, net of tax withholdings (in shares)			761					

<u>Ending Balance at Jul. 29, 2023</u>	2,414,764	268			2,196,235	216,470	1,791	2,414,764
<u>Ending Balance (in shares) at Jul. 29, 2023</u>			229,826	37,791	37,791			
<u>Equity-based compensation expense (Note 7)</u>	18,678				18,678			18,678
<u>Net (loss) income</u>	(1,241,137)					(1,241,137)		(1,241,137)
<u>Foreign currency translation adjustment, net of tax</u>	407						407	407
<u>Unrealized gain (loss) on derivatives (Note 5), net of tax</u>	2,628						2,628	2,628
<u>Gains (Losses) on derivatives reclassified to income (Note 5), net of tax</u>	(286)						(286)	(286)
<u>Issuance of common stock, net of tax withholdings</u>	(2,200)				(2,200)			(2,200)
<u>Issuance of common stock, net of tax withholdings (in shares)</u>			467					
<u>Ending Balance at Oct. 28, 2023</u>	\$ 1,192,854	\$ 268			\$ 2,212,713	\$ (1,024,667)	\$ 4,540	\$ 1,192,854
<u>Ending Balance (in shares) at Oct. 28, 2023</u>			230,293	37,791	37,791			

**CONSOLIDATED
STATEMENTS OF CASH
FLOWS - USD (\$)
\$ in Thousands**

9 Months Ended
Oct. 28, Oct. 29,
2023 2022

Cash flows from operating activities:

<u>Net (loss) income</u>	\$	
	(1,257,635)	\$ 57,178

Adjustments to reconcile net (loss) income to net cash provided by operating activities:

<u>Depreciation and amortization</u>	148,593	143,599
<u>Amortization of debt discounts and issuance costs</u>	3,658	3,694
<u>Provision for deferred taxes</u>	(35,164)	(6,413)
<u>Equity-based compensation</u>	64,431	40,892
<u>Impairments, write-offs and losses on sale of fixed and other assets</u>	2,202	2,299
<u>Loss on partial extinguishment of debt</u>	920	
<u>Amounts reclassified out of accumulated other comprehensive income (loss)</u>	674	
<u>Income from equity method investees</u>	(10,032)	(7,821)
<u>Goodwill impairment</u>	1,222,524	
<u>Non-cash operating lease costs</u>	316,355	316,492
<u>Other non-operating (income) loss</u>	(4,727)	9,369

Changes in assets and liabilities:

<u>Receivables</u>	(600)	9,171
<u>Merchandise inventories</u>	(77,718)	(48,314)
<u>Prepaid expenses and other assets</u>	(6,004)	(2,536)
<u>Accounts payable and book overdrafts</u>	105,421	(19,381)
<u>Accrued salaries and employee benefits</u>	11,586	(16,160)
<u>Accrued expenses and other liabilities</u>	(1,098)	12,110
<u>Operating lease liabilities</u>	(312,935)	(282,954)
<u>Other long-term liabilities</u>	(1,755)	(1,762)
<u>Net cash provided by operating activities</u>	168,696	209,463

Cash flows from investing activities:

<u>Cash paid for fixed assets</u>	(176,532)	(212,074)
<u>Cash paid for acquisitions, net of cash acquired</u>	(4,495)	(7,750)
<u>Cash paid for interest in veterinary joint venture</u>		(35,000)
<u>Proceeds from investment</u>	24,878	
<u>Proceeds from sale of assets</u>		2,127
<u>Net cash used in investing activities</u>	(156,149)	(252,697)

Cash flows from financing activities:

<u>Borrowings under long-term debt agreements</u>		123,000
<u>Repayments of long-term debt</u>	(75,000)	(135,750)
<u>Payments for finance lease liabilities</u>	(4,627)	(4,174)
<u>Proceeds from employee stock purchase plan and stock option exercises</u>	3,324	3,472
<u>Tax withholdings on stock-based awards</u>	(7,737)	(13,581)
<u>Net cash used in financing activities</u>	(84,040)	(27,033)

<u>Net decrease in cash, cash equivalents and restricted cash</u>	(71,493)	(70,267)
<u>Cash, cash equivalents and restricted cash at beginning of period</u>	213,727	221,890
<u>Cash, cash equivalents and restricted cash at end of period</u>	142,234	151,623
<u>Supplemental cash flow disclosures:</u>		
<u>Interest paid, net</u>	107,229	59,608
<u>Capitalized interest</u>	806	954
<u>Income taxes paid</u>	31,261	9,598
<u>Supplemental non-cash investing and financing activities disclosure:</u>		
<u>Accounts payable and accrued expenses for capital expenditures</u>	\$ 26,621	\$ 33,107

Pay vs Performance Disclosure - USD (\$) \$ in Thousands	3 Months Ended		9 Months Ended	
	Oct. 28, 2023	Oct. 29, 2022	Oct. 28, 2023	Oct. 29, 2022
<u>Pay vs Performance Disclosure</u>				
<u>Net Income (Loss)</u>	\$ (1,241,137)	\$ 19,920	\$ (1,257,635)	\$ 58,069

**Insider Trading
Arrangements**

**9 Months Ended
Oct. 28, 2023**

Trading Arrangements, by Individual

Rule 10b5-1 Arrangement Adopted false

Non-Rule 10b5-1 Arrangement Adopted false

Rule 10b5-1 Arrangement Terminated false

Non-Rule 10b5-1 Arrangement Terminated false

Summary of Significant Accounting Policies

9 Months Ended
Oct. 28, 2023

[Accounting Policies](#)

[\[Abstract\]](#)

[Summary of Significant](#)

[Accounting Policies](#)

1. Summary of Significant Accounting Policies

Basis of Presentation

Petco Health and Wellness Company, Inc. (together with its consolidated subsidiaries, the “Company”) is a category-defining health and wellness company focused on improving the lives of pets, pet parents, and its own partners. The Company manages its business as one reportable operating segment.

In the opinion of management, the accompanying consolidated financial statements contain all adjustments necessary for a fair presentation as prescribed by accounting principles generally accepted in the United States (“GAAP”). All adjustments were comprised of normal recurring adjustments, except as noted in these Notes to Consolidated Financial Statements.

There have been no significant changes from the significant accounting policies disclosed in Note 1 of the Notes to Consolidated Financial Statements included in the Company’s Annual Report on Form 10-K for the fiscal year ended January 28, 2023.

The accompanying consolidated financial statements have been prepared in accordance with GAAP for interim financial information and the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. Interim financial results are not necessarily indicative of results anticipated for the full year. The accompanying consolidated financial statements and these Notes to Consolidated Financial Statements should be read in conjunction with the audited consolidated financial statements and Notes to Consolidated Financial Statements included in the Company’s Annual Report on Form 10-K for the fiscal year ended January 28, 2023, from which the prior year balance sheet information herein was derived.

Use of Estimates

The preparation of these consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting periods. These estimates are based on information that is currently available and on various other assumptions that are believed to be reasonable under the circumstances. Actual results could vary from those estimates under different assumptions or conditions.

Veterinary Joint Venture

The Company previously held a 50% investment in a joint venture with a domestic partner to build and operate veterinary clinics in Petco locations. The joint venture was a variable interest entity for which the Company was the primary beneficiary, and accordingly, the joint venture’s results of operations and statements of financial position were included in the Company’s consolidated financial statements during fiscal 2022. In May 2022, the Company completed the purchase of the remaining 50% of the issued and outstanding membership interests of the joint venture, which is now a wholly owned subsidiary of the Company, for cash consideration of \$35.0 million. Direct transaction costs related to this purchase were not material.

Derivative Instruments

In November 2022, the Company entered into a series of interest rate cap agreements to limit the maximum interest on a portion of the Company’s variable-rate debt and decrease its exposure to interest rate variability relating to the three-month Secured Overnight Financing Rate as published by CME Group (“Term SOFR”). The interest rate caps became effective December 30, 2022 and expire on December 31, 2024. The interest rate caps are

accounted for as cash flow hedges, and changes in the fair value of the interest rate caps are reported as a component of accumulated other comprehensive income (loss) (“AOCI”).

In March 2023, the Company entered into an interest rate collar agreement to limit the maximum interest on a portion of the Company's variable-rate debt and decrease its exposure to interest rate variability relating to three-month Term SOFR. The interest rate collar became effective March 31, 2023 and expires on March 31, 2026. The interest rate collar is accounted for as a cash flow hedge, and changes in the fair value of the interest rate collar are reported as a component of AOCI.

In June 2023, the Company entered into an interest rate collar agreement to limit the maximum interest on a portion of the Company's variable-rate debt and decrease its exposure to interest rate variability relating to three-month Term SOFR. The interest rate collar became effective September 30, 2023 and expires on December 31, 2026. The interest rate collar is accounted for as a cash flow hedge, and changes in the fair value of the interest rate collar are reported as a component of AOCI.

Cash and Cash Equivalents

The following table provides a reconciliation of cash, cash equivalents and restricted cash reported in the consolidated balance sheets to the total amounts reported in the consolidated statements of cash flows (in thousands):

		October 28, 2023	January 28, 2023
Cash and cash equivalents	\$ 139,782	\$ 201,901	
Restricted cash included in other current assets	<u>2,452</u>	<u>11,826</u>	
Total cash, cash equivalents and restricted cash in the statement of cash flows	<u>\$ 142,234</u>	<u>\$ 213,727</u>	

Revenue Recognition

9 Months Ended

Oct. 28, 2023

[Revenue from Contract with Customer \[Abstract\]](#)
[Revenue Recognition](#)

2. Revenue Recognition

Net sales by product type and services were as follows (in thousands):

	<u>Thirteen weeks ended</u>		
	<u>October 28, 2023</u>	<u>October 29, 2022</u>	<u>October 29, 2021</u>
Consumables	\$ 733,277	\$ 720,512	\$ 2,230,405
Supplies and companion animals	524,526	575,259	1,622,592
Services and other	236,363	205,449	727,811
Net sales	<u>\$ 1,494,166</u>	<u>\$ 1,501,220</u>	<u>\$ 4,580,808</u>

Goodwill

9 Months Ended
Oct. 28, 2023

[Goodwill, Impaired,
Accumulated Impairment
Loss \[Abstract\]](#)
[Goodwill](#)

3. Goodwill

The changes in the carrying amount of the Company's goodwill were as follows (in thousands):

	Beginning balance
Goodwill	\$
Accumulated impairment	
Goodwill, net	\$
Additions from acquisitions	
Impairment	
	Ending balance
Goodwill	\$
Accumulated impairment	
Goodwill, net	\$

The Company has one reporting unit. The Company performs its annual impairment test during the fourth quarter of each fiscal year or more frequently if warranted by events or changes in circumstances. During the third quarter of fiscal 2023, the Company concluded that indicators of impairment existed, including the Company's share price, as well as current macroeconomic conditions, and performed an interim impairment test. The fair value of the Company's reporting unit was estimated by management with the assistance of a third-party valuation specialist. Fair value estimates used in the quantitative impairment test were based on a combination of discounted cash flow analysis and a public company analysis. The discounted cash flow analysis measures the value of an asset based on its future estimated cash flows. The Company makes estimates and assumptions about sales, gross margins, selling, general and administrative expenses, and other factors based on budgets and forecasts, business plans, economic projections, anticipated future cash flows, and marketplace data. The public company analysis is based on transactional and financial data of publicly traded companies to develop valuation multiples. These multiples are then applied to the Company to determine its fair value.

Significant assumptions used in the determination of fair value of the reporting unit generally include prospective financial information, including revenue and growth rates and earnings multiples. The discounted cash flow model used to determine the fair value of the reporting unit during the third quarter of 2023 was based on the Company's most recent cash flow projections, a discount rate of 16.4% and a terminal growth rate of 3%. The reporting unit fair value measurement is classified as Level 3 in the fair value hierarchy because it involves significant unobservable inputs.

As a result of the impairment test, the Company concluded that the carrying value of the Company's reporting unit exceeded its fair value. The Company recorded a goodwill impairment charge of \$1,222.5 million for the thirteen week period ended October 28, 2023. This charge was recorded in goodwill impairment expense in the statements of operations.

Senior Secured Credit Facilities

9 Months Ended
Oct. 28, 2023

[Debt Disclosure \[Abstract\]](#)

[Senior Secured Credit Facilities](#)

4. Senior Secured Credit Facilities

On March 4, 2021, the Company entered into a \$1,700.0 million secured term loan facility maturing on March 4, 2028 (the "First Lien Term Loan") and a secured asset-based revolving credit facility with availability of up to \$500.0 million, subject to a borrowing base, maturing on March 4, 2026 (the "ABL Revolving Credit Facility").

As of October 28, 2023, the Company was in compliance with its covenants under the First Lien Term Loan and the ABL Revolving Credit Facility.

Term Loan Facilities

On December 12, 2022, the Company amended the First Lien Term Loan to replace the LIBOR-based rate with a SOFR-based rate as the interest rate benchmark. Interest on the First Lien Term Loan is based on, at the Company's option, either a base rate or Term SOFR plus the credit spread adjustment recommended by the Alternative Reference Rates Committee ("Adjusted Term SOFR"), subject to a 0.75% floor, payable upon maturity of the SOFR contract, in either case plus the applicable rate. The base rate is the greater of the bank prime rate, federal funds effective rate plus 0.5% or Adjusted Term SOFR plus 1.0%. The applicable rate is 2.25% per annum for a base rate loan or 3.25% per annum for an Adjusted Term SOFR loan. Principal and interest payments commenced on June 30, 2021. Principal payments are normally \$4.25 million quarterly.

The Company voluntarily prepaid \$35.0 million, \$25.0 million and \$15.0 million of the First Lien Term Loan using existing cash on hand in March 2023, May 2023, and August 2023, respectively. The repayments were applied to the remaining principal payments in order of scheduled payment date and, as a result, the entire remaining balance was included in senior secured credit facilities, net, excluding current portion in the consolidated balance sheets as of October 28, 2023. The Company accounted for the repayments as partial extinguishments and recognized losses on debt extinguishment of \$0.2 million and \$0.9 million during the thirteen and thirty-nine week periods ended October 28, 2023, respectively.

As of October 28, 2023, the outstanding principal balance of the First Lien Term Loan was \$1,595.3 million (\$1,577.6 million, net of the unamortized discount and debt issuance costs). As of January 28, 2023, the outstanding principal balance of the First Lien Term Loan was \$1,670.3 million (\$1,648.9 million, net of the unamortized discount and debt issuance costs). The weighted average interest rate on the borrowings outstanding was 9.0% and 8.2% as of October 28, 2023 and January 28, 2023, respectively. Debt issuance costs are being amortized over the contractual term to interest expense using the effective interest rate in effect at issuance. As of October 28, 2023 and January 28, 2023, the estimated fair value of the First Lien Term Loan was approximately \$1,553.4 million and \$1,649.4 million, respectively, based upon Level 2 fair value hierarchy inputs.

Revolving Credit Facilities

As of October 28, 2023 and January 28, 2023, no amounts were outstanding under the ABL Revolving Credit Facility. As of October 28, 2023, \$446.6 million was available under the ABL Revolving Credit Facility, which is net of \$53.4 million of outstanding letters of credit issued in the normal course of business and no borrowing base reduction for a shortfall in qualifying assets. As of October 28, 2023 and January 28, 2023, unamortized debt issuance costs of \$2.7 million and \$3.6 million, respectively, relating to the ABL Revolving Credit Facility were outstanding and were being amortized using the straight-line method over the remaining term of the agreement.

The ABL Revolving Credit Facility has availability up to \$500.0 million and a \$150.0 million letter of credit sub-facility. The availability is limited to a borrowing base, which allows borrowings of up to 90% of eligible accounts receivable plus 90% of the net orderly liquidation value of eligible inventory plus up to \$50.0 million of qualified cash of the Company to which the Company and guarantors have no access, less reserves as determined by the administrative agent. Letters of credit reduce the amount available to borrow under the ABL Revolving Credit Facility by their face value.

On December 12, 2022, the Company amended the ABL Revolving Credit Facility to replace the LIBOR-based rate with a SOFR-based rate as the interest rate benchmark. Interest on the ABL Revolving Credit Facility is based on, at the Company's option, either the base rate or Adjusted Term SOFR subject to a floor of 0%,

in either case, plus an applicable margin. The applicable margin is currently equal to 25 basis points in the case of base rate loans and 125 basis points in the case of Adjusted Term SOFR loans.

The applicable margin is adjusted quarterly based on the average historical excess availability as a percentage of the Line Cap, which represents the lesser of the aggregate ABL Revolving Credit Facility and the borrowing base, as follows:

	Average Historical Excess Availability	Applicable Margin for Adjusted Term SOFR Loans	Applicable Margin for Base Rate Loans
Less than 33.3% of the Line Cap		1.75%	0.75%
Less than 66.7% but greater than or equal to 33.3% of the Line Cap		1.50%	0.50%
Greater than or equal to 66.7% of the Line Cap		1.25%	0.25%

The ABL Revolving Credit Facility is subject to an unused commitment fee. If the actual daily utilized portion exceeds 50%, the unused commitment fee is 0.25%. Otherwise, the unused commitment fee is 0.375% and is not dependent upon excess availability.

Derivative Instruments

9 Months Ended
Oct. 28, 2023

[Derivative Instruments and Hedging Activities Disclosure \[Abstract\]](#)
[Derivative Instruments](#)

5. Derivative Instruments

The interest rate caps and collars are accounted for as cash flow hedges because they are expected to be highly effective in hedging variability. Changes in the fair value of the cash flow hedges are reported as a component of AOCI. As of October 28, 2023, AOCI included unrealized gains of \$0.4 million, net of tax. Approximately \$0.4 million of pre-tax gains deferred in AOCI were reclassified to interest expense during the thirteen week period ending October 28, 2023. Approximately \$0.7 million of pre-tax losses deferred in AOCI were reclassified to interest expense during the thirty-nine week period ending January 28, 2023, AOCI included unrealized losses of \$2.7 million (\$2.1 million, net of tax). The Company currently estimates that \$3.2 million of date costs on its cash flow hedges that are currently deferred in AOCI will be reclassified to interest expense in the consolidated statement of operations over the next twelve months. This estimate could vary based on actual amounts as a result of changes in market conditions.

The cash flow hedges are reflected in the Company's consolidated balance sheets as follows (in thousands):

	Assets (Liabilities)	Balance sheet location
Current asset portion of cash flow hedges	Other current assets	\$ 5,057
Non-current asset portion of cash flow hedges	Other long-term assets	1,691
Current liability portion of cash flow hedges	Accrued expenses and other liabilities	—
Non-current liability portion of cash flow hedges	Other long-term liabilities	—
Total cash flow hedges		\$ 6,748

Fair Value Measurements

9 Months Ended
Oct. 28, 2023

[Fair Value Disclosures](#)

[\[Abstract\]](#)

[Fair Value Measurements](#)

6. Fair Value Measurements

Assets and Liabilities Measured on a Recurring Basis

The following table presents information about assets and liabilities that are measured at fair value on a recurring basis and indicate the fair value valuation techniques utilized to determine such fair value (in thousands):

			Level 1	Octo 2023
	Assets (liabilities):			
Money market mutual funds	\$	85,965	\$	—
Investments of officers' life insurance	\$	—	\$	12,360
Non-qualified deferred compensation plan	\$	—	\$	(18,180)
	Assets (liabilities):		Level 1	Janu 2023
Money market mutual funds	\$	156,626	\$	—
Investments of officers' life insurance	\$	—	\$	13,110
Non-qualified deferred compensation plan	\$	—	\$	(18,460)
Investment in Rover Group, Inc.	\$	20,152	\$	—

The fair value of money market mutual funds is based on quoted market prices, such as quoted net asset values published by the fund as of the close of the market. Money market mutual funds included in the Company's cash and cash equivalents were \$85.0 million and \$145.5 million as of October 28, 2023, respectively. Also included in the Company's money market mutual funds balances were \$1.0 million and \$11.1 million as of October 28, 2023, respectively, which relate to the Company's restricted cash, and are included in other current assets in the consolidated balance sheets.

The Company maintains a deferred compensation plan for key executives and other members of management, which is funded by investments in life insurance. The fair value of this obligation is based on participants' elected investments, which reflect the closing market prices of similar assets.

In April 2023, the Company sold its interest in Rover Group, Inc. Class A common stock to a buyer at a price determined based on the daily average price, in addition to a premium, over an agreed upon period. The cash proceeds were received throughout fiscal 2023, with the final payment received in August 2023. The Company's interest in the unsettled cash proceeds were remeasured at fair value at each reporting period, and the resulting gain or loss was recorded in other non-operating income in the consolidated statements of operations.

Assets Measured on a Non-Recurring Basis

The Company's non-financial assets, which primarily consist of goodwill, other intangible assets, fixed assets and equity and other investments, are measured at carrying value, or at fair value as of the date of the Company's acquisition of Petco Holdings, Inc. LLC on January 26, 2016, and are not required to be measured at fair value on a recurring basis. However, on a periodic basis (at least annually for goodwill and indefinite-lived intangibles or whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable), non-financial assets are assessed for impairment. If impaired, the carrying value of the asset is written down to fair value using Level 3 inputs.

The Company's trade name has an indefinite life. The Company performs its annual impairment test during the fourth quarter of each fiscal year, or when warranted by events or changes in circumstances. During the third quarter of fiscal 2023, the Company concluded that indicators of impairment included declines in the Company's share price, as well as current macroeconomic conditions, and performed interim impairment tests of its goodwill and trade name. Refer to Note 3 for further discussion of the results of impairment testing performed on the Company's goodwill.

The fair value of the Company's trade name was estimated by management with the assistance of a third-party valuation specialist using the discounted cash flow valuation method, which estimates the hypothetical royalties that would have to be paid if the trade name was not owned. The fair value of the trade name reflected the Company's most recent revenue projections, a discount rate of 17.4% and a terminal growth rate of 3%. The Company concluded that the fair value of the trade name exceeded its carrying value, and therefore no trade name impairment charge was recorded during the third quarter of fiscal 2023. The Company's trade name valuation measurement is classified as Level 3 in the fair value hierarchy because it involves significant unobservable inputs.

There were no indications of impairment of the Company's other intangible assets or equity and other investments during the thirteen or thirty-nine week periods ended October 28, 2023. There were no triggering events identified and no indication of impairment of the Company's goodwill, indefinite-lived intangible assets or equity and other investments during the thirteen or thirty-nine week periods ended October 29, 2022. During the thirteen or thirty-nine week periods ended October 28, 2023, the Company recorded fixed asset and right-of-use asset impairment charges of \$1.0 million and \$2.1 million, respectively. During the thirteen or thirty-

nine week periods ended October 29, 2022, the Company recorded fixed asset and right-of-use asset impairment charges of \$0.8 million and \$1.8 million, respectively.

Stockholders' Equity

9 Months Ended
Oct. 28, 2023

[Stockholders' Equity Note](#)

[\[Abstract\]](#)

[Stockholders' Equity](#)

7. Stockholders' Equity

Equity-Based Compensation

Equity-based compensation awards under the Company's current equity incentive plan (the "2021 Equity Incentive Plan") include restricted stock awards (which include performance-based stock units), restricted stock awards ("RSAs"), non-qualified stock options, and other equity compensation awards. The Company also has an employee stock purchase plan ("ESPP").

The Company's controlling parent, Scooby LP, also maintains an incentive plan (the "2016 Incentive Plan") under which it has awarded profit interests to certain current and former employees, consultants, and non-employee directors of the Company that are restricted profit interests in Scooby LP stock with a vesting threshold ("Series C Units").

The following table summarizes the Company's equity-based compensation expense by award type (in thousands):

	Thirteen weeks ended		
	October 28, 2023	October 28, 2022	October 28, 2021
RSUs and RSAs	\$ 12,917	\$ 9,602	\$ 44,191
Options	4,098	1,820	14,100
ESPP	264	315	1,118
Other awards	904	4,038	5,022
Total equity-based compensation expense	\$ 18,183	\$ 15,775	\$ 64,431

Activity under the 2021 Equity Incentive Plan was as follows (shares and dollars in thousands):

Nonvested/outstanding, January 28, 2023	7,802
Granted	7,368
Vested and delivered/exercised	(2,582)
Forfeited/expired	(1,680)
Nonvested/outstanding, October 28, 2023	10,908
Unrecognized compensation expense as of October 28, 2023	\$ 91,974
	Weighted average remaining expense period as of October 28, 2023

RSA activity has not been material and relates to an RSA of Class A common stock granted to an executive in March 2021. For this grant, the executive will receive the RSAs on each of the first two anniversaries of the grant date. Unvested RSAs were not considered participating securities for earnings per share purposes and were forfeitable.

The ESPP allows eligible employees to contribute up to 15% of their base earnings towards purchases of Class A common stock, subject to a maximum purchase price. The purchase price will be 85% of the lower of (i) the fair

market value of the stock on the associated lookback date and (ii) the fair market value of the stock on the last day of the related purchase period.

Series C Unit activity under the 2016 Incentive Plan was as follows (in thousands):

Outstanding, January 28, 2023	201,359	Units
Granted	—	
Forfeited	(1,557)	
Outstanding, October 28, 2023	199,802	
Vested, October 28, 2023	175,829	

No additional Series C Units have been or will be awarded following the Company's initial public offering. As of October 28, 2023, unrecognized compensation expense related to the unvested portion of Scooby LP's Series C Units was \$4.3 million, which is expected to be recognized over a weighted average

addition to acceleration upon a change in control, a portion of grantees' Series C Units may vest upon certain levels of direct or indirect sales by Scooby LP's Class A common stock, and all unvested Series C Units will fully accelerate in the event Scooby LP sells 90% of its direct or indirect ownership of Scooby LP's Class A common stock.

(Loss) Income Per Share

Potentially dilutive securities include potential Class A common shares related to outstanding stock options, unvested RSUs and RSAs, and restricted stock units, using the treasury stock method. The calculation of diluted shares outstanding excludes securities where the combination of the exercise or purchase of the options and the ESPP) and the associated unrecognized compensation expense is greater than the average market price of Class A common shares, as these securities would be anti-dilutive.

All outstanding equity awards were excluded from the calculation of diluted loss per Class A and B-1 common share in the thirty-nine weeks ended October 29, 2023, as their effect would be antidilutive in a net loss period.

There were approximately 5.3 million potential shares that were anti-dilutive and excluded from the computation of diluted shares outstanding in the thirty-nine weeks ended October 29, 2022.

Commitments and Contingencies

9 Months Ended
Oct. 28, 2023

[Commitments and Contingencies Disclosure](#)

[\[Abstract\]](#)

[Commitments and Contingencies](#)

8. Commitments and Contingencies

The Company is involved in legal proceedings and is subject to other claims and litigation arising in the ordinary course of its business. The Company has made accruals with respect to certain of these matters, where appropriate, which are reflected in the Company's consolidated financial statements but are not, individually or in the aggregate, considered material. For other matters, the Company has not made accruals because management has not yet determined that a loss is probable or because the amount of loss cannot be reasonably estimated. While the ultimate outcome of the matters cannot be determined, the Company currently does not expect that these matters will have a material adverse effect on its consolidated financial statements. The outcome of any litigation is inherently uncertain, however, and if decided adversely to the Company, or if the Company determines that settlement of particular litigation is appropriate, the Company may be subject to liability that could have a material adverse effect on its consolidated financial statements.

Summary of Significant Accounting Policies (Policies)

9 Months Ended
Oct. 28, 2023

[Accounting Policies](#)

[\[Abstract\]](#)

[Basis of Presentation](#)

Basis of Presentation

Petco Health and Wellness Company, Inc. (together with its consolidated subsidiaries, the “Company”) is a category-defining health and wellness company focused on improving the lives of pets, pet parents, and its own partners. The Company manages its business as one reportable operating segment.

In the opinion of management, the accompanying consolidated financial statements contain all adjustments necessary for a fair presentation as prescribed by accounting principles generally accepted in the United States (“GAAP”). All adjustments were comprised of normal recurring adjustments, except as noted in these Notes to Consolidated Financial Statements.

There have been no significant changes from the significant accounting policies disclosed in Note 1 of the Notes to Consolidated Financial Statements included in the Company’s Annual Report on Form 10-K for the fiscal year ended January 28, 2023.

The accompanying consolidated financial statements have been prepared in accordance with GAAP for interim financial information and the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. Interim financial results are not necessarily indicative of results anticipated for the full year. The accompanying consolidated financial statements and these Notes to Consolidated Financial Statements should be read in conjunction with the audited consolidated financial statements and Notes to Consolidated Financial Statements included in the Company’s Annual Report on Form 10-K for the fiscal year ended January 28, 2023, from which the prior year balance sheet information herein was derived.

[Use of Estimates](#)

Use of Estimates

The preparation of these consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting periods. These estimates are based on information that is currently available and on various other assumptions that are believed to be reasonable under the circumstances. Actual results could vary from those estimates under different assumptions or conditions.

[Veterinary Joint Venture](#)

Veterinary Joint Venture

The Company previously held a 50% investment in a joint venture with a domestic partner to build and operate veterinary clinics in Petco locations. The joint venture was a variable interest entity for which the Company was the primary beneficiary, and accordingly, the joint venture’s results of operations and statements of financial position were included in the Company’s consolidated financial statements during fiscal 2022. In May 2022, the Company completed the purchase of the remaining 50% of the issued and outstanding membership interests of the joint venture, which is now a wholly owned subsidiary of the Company, for cash consideration of \$35.0 million. Direct transaction costs related to this purchase were not material.

[Derivative Instruments](#)

Derivative Instruments

In November 2022, the Company entered into a series of interest rate cap agreements to limit the maximum interest on a portion of the Company’s variable-rate debt and decrease its exposure to interest rate variability relating to the three-month Secured Overnight Financing Rate as published by CME Group (“Term SOFR”). The interest rate caps became effective December 30, 2022 and expire on December 31, 2024. The interest rate caps are

accounted for as cash flow hedges, and changes in the fair value of the interest rate caps are reported as a component of accumulated other comprehensive income (loss) (“AOCI”).

In March 2023, the Company entered into an interest rate collar agreement to limit the maximum interest on a portion of the Company’s variable-rate debt and decrease its exposure to interest rate variability relating to

three-month Term SOFR. The interest rate collar became effective March 31, 2023 and expires on March 31, 2026. The interest rate collar is accounted for as a cash flow hedge, and changes in the fair value of the interest rate collar are reported as a component of AOCI.

In June 2023, the Company entered into an interest rate collar agreement to limit the maximum interest on a portion of the Company's variable-rate debt and decrease its exposure to interest rate variability relating to three-month Term SOFR. The interest rate collar became effective September 30, 2023 and expires on December 31, 2026. The interest rate collar is accounted for as a cash flow hedge, and changes in the fair value of the interest rate collar are reported as a component of AOCI.

Cash and Cash Equivalents

Cash and Cash Equivalents

The following table provides a reconciliation of cash, cash equivalents and restricted cash reported in the consolidated balance sheets to the total amounts reported in the consolidated statements of cash flows (in thousands):

		October 28, 2023	January 28, 2023
Cash and cash equivalents	\$ 139,782	\$ 201,901	
Restricted cash included in other current assets	2,452	11,826	
Total cash, cash equivalents and restricted cash in the statement of cash flows	<u>\$ 142,234</u>	<u>\$ 213,727</u>	

Summary of Significant
Accounting Policies (Tables)

9 Months Ended
Oct. 28, 2023

[Accounting Policies](#)

[\[Abstract\]](#)

[Schedule of Cash and Cash](#)

[Equivalents and Restricted](#)

[Cash](#)

The following table provides a reconciliation of cash, cash equivalents and restricted cash reported in the consolidated balance sheets to the total amounts reported in the consolidated statements of cash flows (in thousands):

		October 28, 2023	January 28, 2023
Cash and cash equivalents	\$	139,782	\$ 201,901
Restricted cash included in other current assets		2,452	11,826
Total cash, cash equivalents and restricted cash in the statement of cash flows	\$	<u>142,234</u>	<u>\$ 213,727</u>

**Revenue Recognition
(Tables)**

[Revenue from Contract with
Customer \[Abstract\]](#)

[Summary of Net Sales by
Product Type and Services](#)

**9 Months Ended
Oct. 28, 2023**

Net sales by product type and services were as follows (in thousands):

	<u>Thirteen weeks ended</u>		
	<u>October 28, 2023</u>	<u>October 29, 2022</u>	<u>October 29, 2021</u>
Consumables	\$ 733,277	\$ 720,512	\$ 2,230,405
Supplies and companion animals	524,526	575,259	1,622,592
Services and other	236,363	205,449	727,811
Net sales	<u>\$ 1,494,166</u>	<u>\$ 1,501,220</u>	<u>\$ 4,580,808</u>

Goodwill (Tables)

9 Months Ended
Oct. 28, 2023

[Goodwill, Impaired,
Accumulated Impairment
Loss \[Abstract\]](#)
[Schedule of Changes in
Carrying Amount of Goodwill](#)

The changes in the carrying amount of the Company's goodwill were as follows (in thousands):

	Beginning balance	
Goodwill		\$
Accumulated impairment		
Goodwill, net		\$
Additions from acquisitions		
Impairment		
	Ending balance	
Goodwill		\$
Accumulated impairment		
Goodwill, net		\$

**Senior Secured Credit
Facilities (Tables)**

**9 Months Ended
Oct. 28, 2023**

[Debt Disclosure \[Abstract\]](#)

**[Applicable Margin for
Adjusted LIBOR Loans and
Base Rate Loans based on
Average Historical Excess
Availability](#)**

The applicable margin is adjusted quarterly based on the average historical excess availability as a percentage of the Line Cap, which represents the lesser of the aggregate ABL Revolving Credit Facility and the borrowing base, as follows:

	Average Historical Excess Availability	Applicable Margin for Adjusted Term SOFR Loans	Applicable Margin for Base Rate Loans
Less than 33.3% of the Line Cap		1.75%	0.75%
Less than 66.7% but greater than or equal to 33.3% of the Line Cap		1.50%	0.50%
Greater than or equal to 66.7% of the Line Cap		1.25%	0.25%

**Derivative Instruments
(Tables)**

**9 Months Ended
Oct. 28, 2023**

[Derivative Instruments and Hedging Activities Disclosure \[Abstract Summary of Cash Flow Hedges Reflected in Consolidated Balance Sheets\]](#)

The cash flow hedges are reflected in the Company's consolidated balance sheets as follows (in thousands):

	Assets (Liabilities)	Balance sheet location
Current asset portion of cash flow hedges	Other current assets	\$ 5,057
Non-current asset portion of cash flow hedges	Other long-term assets	1,691
Current liability portion of cash flow hedges	Accrued expenses and other liabilities	—
Non-current liability portion of cash flow hedges	Other long-term liabilities	—
Total cash flow hedges		\$ 6,748

**Fair Value Measurements
(Tables)**

**9 Months Ended
Oct. 28, 2023**

[Fair Value Disclosures
\[Abstract\]
Schedule of Information
About Assets and Liabilities
Measured at Fair Value on
Recurring Basis](#)

The following table presents information about assets and liabilities that are measured at fair value on a recurring basis and indicate the fair value valuation techniques utilized to determine such fair value (in thousands):

			Level 1	Octo
	Assets (liabilities):			
Money market mutual funds	\$	85,965	\$	—
Investments of officers' life insurance	\$	—	\$	12,36
Non-qualified deferred compensation plan	\$	—	\$	(18,18

			Level 1	Janu
	Assets (liabilities):			
Money market mutual funds	\$	156,626	\$	—
Investments of officers' life insurance	\$	—	\$	13,11
Non-qualified deferred compensation plan	\$	—	\$	(18,46
Investment in Rover Group, Inc.	\$	20,152	\$	—

**Stockholders' Equity
(Tables)**

**9 Months Ended
Oct. 28, 2023**

[Stockholders' Equity Note
\[Abstract\]](#)

[Summary of Equity-based
Compensation Expense by
Award Type](#)

The following table summarizes the Company's equity-based compensation expense by award type (in thousands):

		<u>Thirteen weeks ended</u>	
		<u>October 28, 2023</u>	
RSUs and RSAs	\$ 12,917	\$ 9,602	\$ 44,191
Options	4,098	1,820	14,100
ESPP	264	315	1,118
Other awards	904	4,038	5,022
Total equity-based compensation expense	<u>\$ 18,183</u>	<u>\$ 15,775</u>	<u>\$ 64,431</u>

[Schedule of Nonvested Share
Activity](#)

Activity under the 2021 Equity Incentive Plan was as follows (shares and dollars in thousands):

Nonvested/outstanding, January 28, 2023	7,802
Granted	7,368
Vested and delivered/exercised	(2,582)
Forfeited/expired	(1,680)
Nonvested/outstanding, October 28, 2023	<u>10,908</u>
Unrecognized compensation expense as of October 28, 2023	\$ 91,974
	Weighted average remaining expense period as of October 28, 2023

[Schedule of Series C Unit
Activity Under 2016 Incentive
Plan](#)

Series C Unit activity under the 2016 Incentive Plan was as follows (in thousands):

Outstanding, January 28, 2023	201,359	Units
Granted	—	
Forfeited	(1,557)	
Outstanding, October 28, 2023	<u>199,802</u>	
Vested, October 28, 2023	<u>175,829</u>	

**Summary of Significant
Accounting Policies -
Additional Information
(Details)
\$ in Millions**

1 Months Ended 9 Months Ended

**May 31, 2022 Oct. 28, 2023
USD (\$) Segment**

Summary Of Significant Accounting Policies [Line Items]

Number of reportable segments

1

Number of operating segments

1

Variable Interest Entities, Primary Beneficiary

Summary Of Significant Accounting Policies [Line Items]

VIEs' ownership percentage

50.00%

VIEs' agreement to purchase remaining ownership percentage 50.00%

Cash consideration | \$

\$ 35.0

**Summary of Significant
Accounting Policies -
Schedule of Cash and Cash
Equivalents and Restricted
Cash (Details) - USD (\$)
\$ in Thousands**

Oct. 28, 2023 Jan. 28, 2023

Accounting Policies [Abstract]

<u>Cash and cash equivalents</u>	\$ 139,782	\$ 201,901
<u>Restricted cash included in other current assets</u>	\$ 2,452	\$ 11,826
<u>Restricted Cash and Cash Equivalents, Asset, Statement of Financial Position [Extensible List]</u>	Other current assets	Other current assets
<u>Total cash, cash equivalents and restricted cash in the statement of cash flows</u>	\$ 142,234	\$ 213,727

**Revenue Recognition -
Summary of Net Sales by
Product Type and Services
(Details) - USD (\$)
\$ in Thousands**

	3 Months Ended		9 Months Ended	
	Oct. 28, 2023	Oct. 29, 2022	Oct. 28, 2023	Oct. 29, 2022

Disaggregation Of Revenue [Line Items]

<u>Net sales</u>	\$ 1,494,166	\$ 1,501,220	\$ 4,580,808	\$ 4,458,008
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Consumables

Disaggregation Of Revenue [Line Items]

<u>Net sales</u>	733,277	720,512	2,230,405	2,093,510
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Supplies and companion animals

Disaggregation Of Revenue [Line Items]

<u>Net sales</u>	524,526	575,259	1,622,592	1,775,149
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Services and other

Disaggregation Of Revenue [Line Items]

<u>Net sales</u>	\$ 236,363	\$ 205,449	\$ 727,811	\$ 589,349
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**Goodwill - Schedule of
Changes in Carrying
Amount of Goodwill
(Details)
\$ in Thousands**

**9 Months Ended
Oct. 28, 2023
USD (\$)**

Goodwill, Impaired, Accumulated Impairment Loss [Abstract]

<u>Goodwill</u>	\$ 3,001,904
<u>Accumulated impairment</u>	(807,963)
<u>Goodwill, net</u>	2,193,941
<u>Additions from acquisitions</u>	4,830
<u>Impairment</u>	(1,222,524)
<u>Goodwill</u>	3,006,734
<u>Accumulated impairment</u>	(2,030,487)
<u>Goodwill, net</u>	\$ 976,247

**Goodwill (Additional
Information) (Details)**
\$ in Millions

**9 Months Ended
Oct. 28, 2023**
USD (\$)
Segment

Indefinite-Lived Intangible Assets [Line Items]

Number of reporting units | Segment

1

Goodwill and indefinite-lived intangible impairment | \$

\$ 1,222.5

Level 3

Indefinite-Lived Intangible Assets [Line Items]

Discounted cash flow to determine fair value discount rate percent 16.40%

Discounted cash flow terminal growth rate percent 3.00%

Senior Secured Credit Facilities - Additional Information (Details) - USD (\$)	1 Months Ended			3 Months Ended	9 Months Ended			
	Dec. 12, 2022	Mar. 04, 2021	Aug. 31, 2023	May 31, 2023	Mar. 31, 2023	Oct. 28, 2023	Oct. 28, 2023	Jan. 28, 2023
Line Of Credit Facility [Line Items]								
Credit facility, covenant compliance								the Company was in compliance with its covenants under the First Lien Term Loan and the ABL Revolving Credit Facility.
Loss on debt extinguishment Letter of credit sub facility						\$ (174,000)	\$ (920,000)	
Maximum borrowing capacity of eligible accounts receivable in percentage						150,000,000.0	\$ 150,000,000.0	
Borrowing capacity of net orderly liquidation value of eligible inventory in percentage								90.00%
Qualified cash						50,000,000.0	\$ 50,000,000.0	
Amended Term Loan Facility								
Line Of Credit Facility [Line Items]								
Weighted average interest rate First Lien Term Loan								8.20%
Line Of Credit Facility [Line Items]								
Borrowings under credit facility		\$ 1,700,000,000						
Debt instrument floor rate	0.75%							
Quarterly principal payments	\$ 4,250,000							
Credit facility principal repaid			\$ 15,000,000	\$ 25,000,000	\$ 35,000,000			
Outstanding principal balance, gross						1,595,300,000	1,595,300,000	\$ 1,670,300,000
Outstanding principal balance, net of unamortized discount and debt issuance costs						\$ 1,577,600,000	\$ 1,577,600,000	1,648,900,000
Weighted average interest rate First Lien Term Loan Level 2						9.00%	9.00%	
Line Of Credit Facility [Line Items]								
Estimated fair value of credit facility						\$ 1,553,400,000	\$ 1,553,400,000	1,649,400,000

First Lien Term Loan Base Rate				
Line Of Credit Facility [Line Items]				
Debt instrument basis spread on variable rate	0.50%			
Applicable annual rate	2.25%			
First Lien Term Loan Adjusted SOFR				
Line Of Credit Facility [Line Items]				
Debt instrument basis spread on variable rate	1.00%			
Applicable annual rate	3.25%			
Amended Revolving Credit Facility				
Line Of Credit Facility [Line Items]				
Outstanding principal balance, net of unamortized discount and debt issuance costs				0
ABL Revolving Credit Facility				
Line Of Credit Facility [Line Items]				
Credit facility, initiation date	Mar. 04, 2021			
Borrowings under credit facility	\$ 500,000,000			
Credit facility, maturity date				Mar. 04, 2026
Outstanding principal balance, net of unamortized discount and debt issuance costs		0	\$ 0	
Unamortized debt issuance costs		2,700,000	2,700,000	\$ 3,600,000
Borrowings available under credit facility		446,600,000	446,600,000	
Outstanding letters of credit		53,400,000	53,400,000	
Borrowings base reduction		\$ 0	0	
Maximum borrowing capacity			\$	500,000,000.0
Amended Revolving Credit Facility				
Line Of Credit Facility [Line Items]				
Debt instrument floor rate				0.00%
Line of credit facility, unused commitment fee percentage				0.375%
Amended Revolving Credit Facility Actual Daily Utilized Portion Exceeds 50%				
Line Of Credit Facility [Line Items]				
Line of credit facility, unused commitment fee percentage				0.25%
Amended Revolving Credit Facility Base Rate				

Line Of Credit Facility [Line Items]

Debt instrument basis spread on variable rate

0.25%

Amended Revolving Credit Facility | LIBOR

Line Of Credit Facility [Line Items]

Debt instrument basis spread on variable rate

1.25%

**Senior Secured Credit
Facilities - Applicable
Margin for Adjusted LIBOR
Loans and Base Rate Loans
based on Average Historical
Excess Availability (Details) -
Amended Revolving Credit
Facility**

**9 Months
Ended**

Oct. 28, 2023

[Applicable Margin for Adjusted SOFR Loans | Less than 33.3% of the Line Cap](#)

[**Line Of Credit Facility \[Line Items\]**](#)

[Applicable Margin Rate for Loans based on Average Historical Excess Availability](#)

1.75%

[Applicable Margin for Adjusted SOFR Loans | Less than 66.7% but Greater than or Equal to 33.3% of the Line Cap](#)

[**Line Of Credit Facility \[Line Items\]**](#)

[Applicable Margin Rate for Loans based on Average Historical Excess Availability](#)

1.50%

[Applicable Margin for Adjusted SOFR Loans | Greater than or Equal to 66.7% of the Line Cap](#)

[**Line Of Credit Facility \[Line Items\]**](#)

[Applicable Margin Rate for Loans based on Average Historical Excess Availability](#)

1.25%

[Applicable Margin for Base Rate Loans](#)

[**Line Of Credit Facility \[Line Items\]**](#)

[Applicable Margin Rate for Loans based on Average Historical Excess Availability](#)

0.25%

[Applicable Margin for Base Rate Loans | Less than 33.3% of the Line Cap](#)

[**Line Of Credit Facility \[Line Items\]**](#)

[Applicable Margin Rate for Loans based on Average Historical Excess Availability](#)

0.75%

[Applicable Margin for Base Rate Loans | Less than 66.7% but Greater than or Equal to 33.3% of the Line Cap](#)

[**Line Of Credit Facility \[Line Items\]**](#)

[Applicable Margin Rate for Loans based on Average Historical Excess Availability](#)

0.50%

[Applicable Margin for Base Rate Loans | Greater than or Equal to 66.7% of the Line Cap](#)

[**Line Of Credit Facility \[Line Items\]**](#)

[Applicable Margin Rate for Loans based on Average Historical Excess Availability](#)

0.25%

**Senior Secured Credit
Facilities - Applicable
Margin for Adjusted LIBOR
Loans and Base Rate Loans
based on Average Historical
Excess Availability
(Parenthetical) (Details) -
Amended Revolving Credit
Facility**

**9 Months
Ended**

**Oct. 28,
2023**

<p><u>Less than 33.3% of the Line Cap Applicable Margin for Adjusted SOFR Loans Maximum Line Of Credit Facility [Line Items]</u> Percentage of average historical excess availability of loans</p>	33.30%
<p><u>Less than 33.3% of the Line Cap Applicable Margin for Base Rate Loans Maximum Line Of Credit Facility [Line Items]</u> Percentage of average historical excess availability of loans</p>	33.30%
<p><u>Less than 66.7% but Greater than or Equal to 33.3% of the Line Cap Applicable Margin for Adjusted SOFR Loans Maximum Line Of Credit Facility [Line Items]</u> Percentage of average historical excess availability of loans</p>	66.70%
<p><u>Less than 66.7% but Greater than or Equal to 33.3% of the Line Cap Applicable Margin for Adjusted SOFR Loans Minimum Line Of Credit Facility [Line Items]</u> Percentage of average historical excess availability of loans</p>	33.30%
<p><u>Less than 66.7% but Greater than or Equal to 33.3% of the Line Cap Applicable Margin for Base Rate Loans Maximum Line Of Credit Facility [Line Items]</u> Percentage of average historical excess availability of loans</p>	66.70%
<p><u>Less than 66.7% but Greater than or Equal to 33.3% of the Line Cap Applicable Margin for Base Rate Loans Minimum Line Of Credit Facility [Line Items]</u> Percentage of average historical excess availability of loans</p>	33.30%
<p><u>Greater than or Equal to 66.7% of the Line Cap Applicable Margin for Adjusted SOFR Loans Minimum Line Of Credit Facility [Line Items]</u> Percentage of average historical excess availability of loans</p>	66.70%
<p><u>Greater than or Equal to 66.7% of the Line Cap Applicable Margin for Base Rate Loans Minimum Line Of Credit Facility [Line Items]</u> Percentage of average historical excess availability of loans</p>	66.70%

Derivative Instruments - Additional Information (Details) - USD (\$) \$ in Thousands	3 Months Ended			9 Months Ended	12 Months Ended
	Oct. 28, 2023	Jul. 29, 2023	Apr. 29, 2023	Oct. 28, 2023	Jan. 28, 2023
<u>Derivative [Line Items]</u>					
<u>Unrealized gain on derivatives</u>	\$ 2,628	\$ 3,915	\$ (984)	\$ 5,559	
<u>Interest Rate Caps</u>					
<u>Derivative [Line Items]</u>					
<u>Unrealized gains (losses) included in AOCI, before tax</u>				5,300	\$ 2,700
<u>Pre-tax gain (losses) deferred in reclassified to interest expense</u>	\$ 400			(700)	
<u>Unrealized gain on derivatives</u>				\$ 4,000	2,100
<u>Estimated losses on interest rate caps deferred in AOCI reclassified to interest expense</u>					\$ 3,200

**Derivative Instruments -
Summary of Cash Flow
Hedges Reflected in
Consolidated Balance Sheets
(Details) - Cash Flow
Hedging [Member] - USD (\$)
\$ in Thousands**

Oct. 28, 2023

Jan. 28, 2023

Derivative [Line Items]

<u>Current asset portion of cash flow hedges</u>	\$ 5,057	
<u>Derivative Asset, Current, Statement of Financial Position [Extensible Enumeration]</u>	Other Assets, Current	
<u>Non-current asset portion of cash flow hedges</u>	\$ 1,691	
<u>Derivative Asset, Noncurrent, Statement of Financial Position [Extensible Enumeration]</u>	Other Assets, Noncurrent	
<u>Current liability portion of cash flow hedges</u>		\$ (1,176)
<u>Derivative Liability, Current, Statement of Financial Position [Extensible Enumeration]</u>		Accrued Liabilities, Current
<u>Non-current liability portion of cash flow hedges</u>		\$ (1,717)
<u>Derivative Liability, Noncurrent, Statement of Financial Position [Extensible Enumeration]</u>		Other Liabilities, Noncurrent
<u>Total cash flow hedges</u>	\$ 6,748	\$ (2,893)

**Fair Value Measurements -
Schedule of Information
About Assets and Liabilities
Measured at Fair Value on
Recurring Basis (Details) -
Recurring - USD (\$)
\$ in Thousands**

Oct. 28, 2023 Jan. 28, 2023

Level 1 | Money Market Mutual Funds

Assets (liabilities):

<u>Asset fair value</u>	\$ 85,965	\$ 156,626
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Level 1 | Investments of Officers' Life Insurance

Assets (liabilities):

<u>Asset fair value</u>	0	0
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Level 1 | Investment in Rover Group, Inc.

Assets (liabilities):

<u>Asset fair value</u>		20,152
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Level 2 | Money Market Mutual Funds

Assets (liabilities):

<u>Asset fair value</u>	0	0
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Level 2 | Investments of Officers' Life Insurance

Assets (liabilities):

<u>Asset fair value</u>	12,362	13,112
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Level 2 | Investment in Rover Group, Inc.

Assets (liabilities):

<u>Asset fair value</u>		0
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Level 3 | Money Market Mutual Funds

Assets (liabilities):

<u>Asset fair value</u>	0	0
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Level 3 | Investments of Officers' Life Insurance

Assets (liabilities):

<u>Asset fair value</u>	0	0
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Level 3 | Investment in Rover Group, Inc.

Assets (liabilities):

<u>Asset fair value</u>		0
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Non-qualified Deferred Compensation Plan | Level 1

Assets (liabilities):

<u>Liabilities fair value</u>	0	0
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Non-qualified Deferred Compensation Plan | Level 2

Assets (liabilities):

<u>Liabilities fair value</u>	(18,184)	(18,464)
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Non-qualified Deferred Compensation Plan | Level 3

Assets (liabilities):

<u>Liabilities fair value</u>	\$ 0	\$ 0
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Fair Value Measurements - Additional Information (Details)	3 Months Ended		9 Months Ended		
	Oct. 28, 2023	Oct. 29, 2022	Oct. 28, 2023	Oct. 29, 2022	Jan. 28, 2023
	USD (\$)	USD (\$)	USD (\$)	USD (\$)	USD (\$)
<u>Fair Value Assets And Liabilities Measured On Recurring And Nonrecurring Basis [Line Items]</u>					
<u>Impairment of fixed asset and right-of-use asset</u>	\$ 1,000,000.0	\$ 800,000	\$ 2,100,000	\$ 1,800,000	
<u>Discount Rate</u>					
<u>Fair Value Assets And Liabilities Measured On Recurring And Nonrecurring Basis [Line Items]</u>					
<u>Percentage of revenue projections</u>	17.4		17.4		
<u>Terminal Growth Rate</u>					
<u>Fair Value Assets And Liabilities Measured On Recurring And Nonrecurring Basis [Line Items]</u>					
<u>Percentage of revenue projections</u>	3		3		
<u>Trade Name</u>					
<u>Fair Value Assets And Liabilities Measured On Recurring And Nonrecurring Basis [Line Items]</u>					
<u>Impairment charge of indefinite-lived intangible assets</u>	\$ 0				
<u>Cash and Cash Equivalents</u>					
<u>Fair Value Assets And Liabilities Measured On Recurring And Nonrecurring Basis [Line Items]</u>					
<u>Money market mutual funds</u>	85,000,000.0		\$ 85,000,000.0		\$ 145,500,000
<u>Restricted Cash Other Current Assets</u>					
<u>Fair Value Assets And Liabilities Measured On Recurring And Nonrecurring Basis [Line Items]</u>					
<u>Money market mutual funds</u>	\$ 1,000,000.0		\$ 1,000,000.0		\$ 11,100,000

**Stockholders' Equity -
Schedule of Nonvested Share
Activity (Details) - 2021
Equity Incentive Plan
shares in Thousands, \$ in
Thousands**

9 Months Ended

**Oct. 28, 2023
USD (\$)
shares**

RSUs and RSAs

**Share Based Compensation Arrangement By Share Based Payment Award [Line
Items]**

<u>Nonvested/outstanding, January 28, 2023</u>	7,802
<u>Granted</u>	7,368
<u>Vested and delivered/exercised</u>	(2,582)
<u>Forfeited/expired</u>	(1,680)
<u>Nonvested/outstanding, October 28, 2023</u>	10,908
<u>Unrecognized compensation expense as of October 28, 2023 \$</u>	\$ 91,974
<u>Weighted average remaining expense period as of October 28, 2023</u>	1 year 10 months 24 days

Options

**Share Based Compensation Arrangement By Share Based Payment Award [Line
Items]**

<u>Options outstanding, January 28, 2023</u>	7,814
<u>Forfeited/expired</u>	(560)
<u>Options outstanding, October 28, 2023</u>	7,254
<u>Unrecognized compensation expense as of October 28, 2023 \$</u>	\$ 15,654
<u>Weighted average remaining expense period as of October 28, 2023</u>	1 year 1 month 6 days

**Stockholders' Equity -
Additional Information
(Details) - USD (\$)
\$ in Millions**

1 Months Ended	9 Months Ended	
Mar. 31, 2021	Oct. 28, 2023	Oct. 29, 2022

Share Based Compensation Arrangement By Share Based Payment Award
[Line Items]

<u>Anti-dilutive shares excluded from computation of diluted shares outstanding</u> <u>2016 Incentive Plan</u>	5,300,000
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Share Based Compensation Arrangement By Share Based Payment Award
[Line Items]

<u>Number of additional shares awarded</u>	0
<u>Unrecognized compensation expense related to the unvested portion</u>	\$ 4.3
<u>Unrecognized compensation expense, expected to be recognized over weighted average period</u>	10 months 24 days

Class A Common Stock

Share Based Compensation Arrangement By Share Based Payment Award
[Line Items]

<u>Employee stock purchase plan maximum percentage of earnings to purchase shares by eligible participants</u>	15.00%
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<u>Purchase price as a percentage of the lesser of the market value of such shares at either the lookback date or last day of related purchase period</u>	85.00%
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Class A Common Stock | 2016 Incentive Plan

Share Based Compensation Arrangement By Share Based Payment Award
[Line Items]

<u>Threshold percentage of direct and indirect holdings of common stock</u>	90.00%
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Class A Common Stock | Executive

Share Based Compensation Arrangement By Share Based Payment Award
[Line Items]

<u>Vesting period</u>	2 years
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Class A Common Stock | Anniversaries of Grant Date | Executive

Share Based Compensation Arrangement By Share Based Payment Award
[Line Items]

<u>Percentage of restricted shares vested</u>	50.00%
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**Stockholders' Equity -
Schedule of Series C Unit
Activity Under 2016
Incentive Plan (Details) -
2016 Incentive Plan**

9 Months Ended

**Oct. 28, 2023
shares**

Share Based Compensation Arrangement By Share Based Payment Award [Line Items]

<u>Outstanding, January 28, 2023</u>	201,359,000
<u>Granted</u>	0
<u>Forfeited</u>	(1,557,000)
<u>Outstanding, October 28, 2023</u>	199,802,000
<u>Vested, October 28, 2023</u>	175,829,000

1. Introduction
2. Background
3. Methodology
4. Results
5. Discussion
6. Conclusion
7. References
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